The Solicitors' Journal

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CURRENT TOPICS

Judges and Specialists

LAWYERS and judges are no longer swathed in comfortable ignorance of other men's work and play, and Mr. Punch's old joke about forming a school on everyday matters for ignorant judges now falls a little flat. On 23rd April, a well-known Treasury counsel displayed an unexpected aspect of his personality when presiding at the Shakespeare Fellowship, whose claim is that the plays of Shakespeare were written by Edward de Vere, 17th Earl of Oxford, and not by "the uncouth Stratford ostler." On 10th April, Sir LAURENCE DUNNE, Chief Metropolitan Magistrate, addressing other magistrates and court officials said: "I have recommended to the Home Office that the Lion and the Unicorn at Bow Street should be supplanted by a new statue, a statue of the Unknown Bow Street Prisoner. The idea has met with little favour. Apparently they are rather short of wire." With such evidence available of the wide interests of bench and bar in the realms of art and literature, it is not surprising to find Viscountess RIDLEY pleading, at a meeting of magistrates at Bradford on 15th April, for the appointment of more experts in various fields as justices of the peace. She argued that the increasing number of expert witnesses was a reason for appointing experts to the Bench. One can understand the bewilderment of those not used to the ways of the expert, when two so utterly conflicting expert opinions are given as completely to falsify the proverb *experto crede*. To put an expert on the bench seems similar to the well-known homœopathic remedy of curing a hangover with another drink. Viscountess Ridley agrees that it may not be feasible to appoint experts in every field to every Bench. If it were possible, presumably the ideal bench would contain representatives of all the local trades and professions, and the blacksmiths would sit in cases involving blacksmiths, sculptors would try sculptors and poets would try poets. Nearly every offence would become technical or a matter of trade or professional conduct. Whatever the virtues of such a system, it is very different from that which we know, in which those who prosecute and try us are experts, if at all, only when they are off duty.

Civil Aid Certificates

THERE is no excuse for mistakes in civil aid certificates as to the purpose for which they are granted. The best that can be said of a mistake in a certificate, described by VAISEY, J., on 19th April (*The Times*, 20th April), as "self-contradictory and nonsense," is that a guess as to its meaning might reasonably be correct. The certificate was granted for "prosecuting an action in the High Court of Justice under s. 210 of the Companies Act, 1948, for misfeasance, and to enforce any order for costs." It was "signed" by means of a smudged rubber stamp, and the space to indicate the number of the area committee was left blank. Vaisey, J., said: "It is shocking, disrespectful to the court and unfair to the litigant to give him a thing like that, and the matter

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should be brought to the notice of The Law Society." It should be added that it is also unfair to the solicitors and counsel who agree to prosecute the case to leave them in doubt as to what case they are prosecuting.

The Two Branches

MR. B. TRAYTON KENWARD, of Lincoln's Inn, commented in *The Times* of 20th April on Sir HARTLEY SHAWCROSS's recent statement at the general meeting of the Bar as to the need for the traditional detachment as between solicitors and barristers. He said solicitors would agree with this in principle, but thought that the statement that the detachment did not arise through snobbishness or because barristers thought themselves better than solicitors was not happily phrased. "Incidentally," he wrote, "I am sure that Sir Hartley Shawcross will agree that a case is frequently brought to a successful conclusion quite as much owing to the skill and meticulous care on the part of the instructing solicitor in preparing the case as by the brilliance of counsel's advocacy." That being so, legitimate publicity attaches to the names of counsel and solicitors engaged in cases reported in the *Law Reports*, and those names are properly reported. It is disappointing to see that, without giving reasons, those responsible for the law reporting in *The Times* have ceased to publish the names of solicitors engaged in the cases reported in that newspaper, while rightly continuing to report the names of counsel.

Negligence and the Medical Profession

THE reply to a question in the House of Commons (see *post*, p. 319) reveals that consultations are taking place between the Ministry of Health and representatives of the medical profession on the position arising from actions for negligence against the medical staff. The *Medical World*, in the current issue, states that many hospital beds are occupied by perfectly fit people being "kept under observation" because doctors and hospitals are afraid to diagnose in case they should be wrong and be subsequently sued for negligence. It asks for a new examination and an authoritative definition of the doctor's duties and responsibilities in regard to negligence. It is certainly true that until 1948 there was very little indeed in the way of authority in our books on the subject of medical negligence. The fact that there was little authority does not necessarily indicate that there was no negligence—it is more likely to have been due to difficulties of proof and of the expense involved therein. On the other hand, American reports show a wealth of litigation against the medical and dental professions. It is an interesting speculation why this should be so.

Easier Divorce ?

ONE of the surest methods of proving the truth of a proposition is, as Euclid showed long ago, to pour ridicule on the logical result of the contrary proposition. An article by N. C. P. HARVEY, Q.C., in the current *Modern Law Review* seems to adopt this method in relation to the law of marriage and divorce, for it enunciates a number of propositions which are so startling as to require some such justification. Marriage, he states, has ceased legally to be anything like a life-long union ; it is simply a union for three years certain, terminable thereafter at the option of the parties. The number of marriages dissolved annually is about 30,000, and continued increase in this rate may well lead, as Mr. Harvey's statement implies, to a complete destruction of the conception and institution of marriage as we know it to-day. As a corollary to this proposition Mr. Harvey states that, although at one time it seemed that housing shortages might cause a slump in divorce, the situation was saved by the humane discovery that desertion is by no means inconsistent with the parties having continued to live under one roof. Equally satisfactory, he says, is the recent discovery that intercourse between the parties is not necessarily inconsistent with continuing desertion. Large incomes can be made at the Bar out of practices consisting almost wholly of undefended divorce cases, which take an average of ten to fifteen minutes to hear, and the paper work of which can be done by an experienced practitioner in his sleep. The wealth of talent employed and the £1½m. annually spent are misplaced, in Mr. Harvey's opinion. He says that, instead of "the cream of the business" being "skimmed off" by "private entrepreneurs," the Government could dispense with time-wasting taking of evidence and charge its own "brokerage" on the registration of divorce. This "latter-day debasement" of the Christian conception of marriage also means, he says, that marriage need not be a pre-condition of divorce, but a man and woman "who got their liaison stamped" become potential wards of the Divorce Court. If registration were to establish a distinction between "tenancies for life" and those for seven, fourteen and twenty-one years, it would be a graceful concession, he wrote, to the religious scruples of those who still believe in genuine marriage. *Quod est absurdum* —or is it ?

Latin and Law

IT has been suggested by Canon H. T. POWELL, of Sutton-at-Hone, in a letter to *The Times* of 23rd April, that the word "nil" is inapt to announce the fact that no candidates attained a first class in the recent intermediate examination of The Law Society. "Nil" cannot mean "nobody," he noted. "'Nobody' was 'nemo' sixty years ago when the writer weathered the Classical Tripos." Without attempting to lay down the law or even to usurp the task of The Law Society in clarifying this important matter, we would suggest that "nil" nowadays conveys the idea of a numeral and is a succinct, though possibly derivatively inaccurate, method of expressing that not one candidate succeeded in attaining a first class. "Nemo," so far as the word is in use to-day, is a *nom de plume*. It is a pity that there is not a short and emphatic word to express the collective disappointment of the profession in the fact that, out of 347 candidates who sat for The Law Society's Final Examination, only 162 passed. If there is such a word, either it is not printable in *The Times*, or it is Latin, and Canon Powell's letter has caused a cautious sub-editor to delete it.

Road Safety

THE twenty-fourth annual report of The Pedestrians' Association, for the year ending 31st December, 1952, records a welcome general reduction in the number of persons killed and injured on the roads. The hard core of the problem remains, states the report, and the time is overdue for the appointment of a Royal Commission on Road Accidents. The Secretary has continued to represent pedestrians on the Ministry of Transport Road Safety Committee. On 6th November, 1952, it was agreed at a special general meeting of the Association to add to its title the words "for road safety." In acknowledging its gratitude to local authorities that give it support, the Association points out that under s. 136 of the Local Government Act, 1948, the Ministry of Housing and Local Government may approve the payment by local authorities of subscriptions to the Association.

Procedure

XXIV—HIGH COURT ACTIONS TO RECOVER CONTROLLED PROPERTY

In writing, at p. 239, *ante*, of the circumstances in which a writ may be specially indorsed with or accompanied by a statement of the plaintiff's claim, we said that certain claims by landlords to recover possession of land might in the Chancery Division be so indorsed. We specified the Chancery Division because all such claims may be specially indorsed in the Queen's Bench Division except in actions in which the plaintiff alleges fraud. We then committed ourselves first to a truism and then to a misstatement. As to the truism—that many properties which are made the subject of possession actions are restricted by the Rent Acts—we have no cause for repentance. But the writer desires here and now, with proper apologies, to correct his slip and to take the opportunity, if he may, of enlarging a little on what he ought to have written.

Section 17 (2) of the Rent and Mortgage Interest Restrictions Act, 1920, gives the county court jurisdiction to deal with any claim or other proceedings arising out of the Act or any of the provisions thereof, "notwithstanding that by reason of the amount of the claim or otherwise the case would not but for this provision be within the jurisdiction of a county court." Since the general scheme of the later Rent Acts which extended or modified the area of control was to render the dwelling-houses to which they related subject to the principal Acts, beginning with that of 1920, the effect is that s. 17 (2) applies to all controlled properties, by whatever Act the restrictions are imposed. Where we were wrong was in calling this jurisdiction of the county court exclusive. That it is not so is apparent from the continuation of the subsection, which goes on "and if a person takes proceedings under this Act in the High Court which he could have taken in the county court, he shall not be entitled to recover any costs." Atkin, L.J., summed up his view of s. 17 (2) by saying that while the county court had not exclusive jurisdiction, he was satisfied that claims in the ordinary way should be brought in that court (*Gill* v. *Luck* (1923), 130 L.T. 331).

Much later Denning, J., as he then was, assigned a reason for the subsection. "The procedure in the county court," said his lordship, "is better suited to carry out the intention of the Legislature than the procedure in the High Court. In the county court the tenant receives a summons to appear at the court on a named day, and on that day the judge inquires into the case to see whether the conditions of the Act are satisfied before he makes an order for possession. In the High Court the tenant receives a writ commanding him to 'enter an appearance.' If he fails to do so, as he may for a number of reasons, then judgment is entered against him automatically without any inquiry whether the conditions of the Act are satisfied, and it may be a judgment which the court has no jurisdiction to give, either in respect of possession or costs" (*Smith* v. *Poulter* [1947] 1 All E.R. 216). There is also the more general consideration that controlled premises are likely to be within the limit of the ordinary jurisdiction of the county court as to actions for the recovery of land (County Courts Act, 1934, s. 48), so that the imposition of a costs sanction is in line with the general policy of discouraging recourse to the High Court in the smaller classes of litigation. In the case of s. 17 the complete deprivation of costs is directed; *face* the headnote in *Wolfe* v. *Hogan* at [1949] 1 All E.R. 570, they are not merely limited to the county court scale.

Magistrates also have a jurisdiction to order possession under the Small Tenements Recovery Act, 1838, and must, if the property is subject to the Rent Acts, have regard to the provisions of those Acts. But the courts of summary jurisdiction are often, again, unsuitable tribunals for the purpose because of the technical questions that inevitably arise. Lord Goddard, C.J., in *Bowden* v. *Rallison* [1948] 1 All E.R. 841, said in terms that parties would be much better advised to take advantage of the county court.

Section 17 (2) of the 1920 Act is worded widely enough to embrace all claims arising out of the Rent Acts. So far as possession actions go, *Russoff* v. *Lipovitch* [1925] 1 K.B. 628 demonstrates that if the landlord has to show one of the statutorily authorised grounds for ordering possession before he can succeed, the action is thereby deemed to be one arising out of the Acts so that the county court has jurisdiction and the costs sanction is applicable. The purist approach of McCardie, J., that in such a case the landlord was merely relying on a common-law right to possession restricted in particular respects by the Acts was not approved in the Court of Appeal. And where a landlord successfully claimed possession of premises against defendants whom he alleged to be mere trespassers, but knew that one of them would raise a Rent Act point, he was held disentitled to costs (*Lee* v. *K. Carter, Ltd.* [1949] 1 K.B. 85).

On the other hand if, although the rateable value of a dwelling-house is such as to bring it within the Rent Acts, there can arise no question of statutory protection because, e.g., an unauthorised sub-tenant is in possession, the landlord's action in the High Court can be maintained independently of the Acts and he can recover his costs (*Joslowitz* v. *Burstein* [1948] 1 All E.R. 40). A similar result follows the joining with a claim for possession under the Acts of a claim for rent or other relief due under a *contractual* tenancy, being a claim outside the pecuniary limit of the county court's jurisdiction (*A. J. Smith & Co.* v. *Kirby* [1947] 1 All E.R. 459). But if the ancillary claim arises out of a statutory tenancy, then the county court can entertain the whole action whatever the amount of damages claimed (*Wolfe* v. *Clarkson* [1950] 2 All E.R. 529), and costs in the High Court would be disallowed.

Since possession of controlled premises may be ordered against a statutory tenant only on the conditions laid down in the Rent Acts, whether the tenant defends the action or not, some opportunity ought always to be given the court to see that those conditions are fulfilled. This consideration takes us back to the observations of Denning, J., quoted earlier in this article. His lordship proceeded, in *Smith* v. *Poulter*, to observe that if, notwithstanding the Legislature's discouragement, a landlord proceeded in the High Court for possession of controlled property, the court should be informed of the facts. "It is desirable, therefore, that in actions for possession of a dwelling-house the indorsement of the writ should state either the reason why the house is not within the Rent Restrictions Acts or, if it is within the . . . Acts, what is the ground on which possession is sought." A judgment obtained in default of appearance was, in *Smith* v. *Poulter*, set aside on the tenant filing an affidavit claiming the benefit of the Acts.

If a writ complying with the direction of Denning, J., is specially indorsed and appearance is entered, there seems nothing to prevent the issue of a summons under Ord. 14, if we except a tentative *dictum* of Atkin, L.J., in *Gill* v. *Luck*, *supra*. Certainly, in both *Lee* v. *K. Carter, Ltd.*, *supra*, and *Cow* v. *Casey* [1949] 1 K.B. 474, that course was followed. In the former the matter was remitted to the county court on the Rent Act point being raised in the affidavit in opposition to judgment; in the latter the master gave leave to sign judgment in spite of a suggested defence under the Acts, and the Court of Appeal held that he was right. Clearly the plaintiff's affidavit in such circumstances must go beyond the formal verification of the claim. It must furnish material on which the master can satisfy himself that the statutory conditions are fulfilled. To that extent the *dicta* in *Gill* v. *Luck* are unimpeachable.

J. F. J.

A Conveyancer's Diary

EFFECT OF DETERMINATION BY PUBLIC BODY

DESPITE their complexity the War Damage Acts have not produced many reported decisions on their construction and effect, a circumstance which may, perhaps, justify the inference that the administration of this legislation by the War Damage Commission has in general been sympathetic. It is all the more surprising, therefore, that the Commission should have pushed the dispute in *Re* 56 *Denton Road, Twickenham* [1953] Ch. 51 to the point of litigation. Technicalities apart, the Commission's case had no apparent merits. But be that as it may, the decision is one of some interest, for the principle which can be deduced from it is by no means confined to this particular legislation.

The plaintiff was the owner of a house, 56 Denton Road, Twickenham, which was partly demolished by enemy action in 1940. Almost immediately afterwards the local authority pulled down what remained standing of the house. There was thus no doubt that the plaintiff was entitled to a payment in respect of the war damage that she suffered, but the question was whether this payment was to be a cost of works payment or a value payment. Under the former the plaintiff stood to receive about £5,000, under the latter an amount which had been fixed at £1,616 15s. By the first notification which the Commission made to her, the plaintiff was informed that a preliminary classification of total loss had been made; that is to say, that the case was one for a value payment. After communicating with her architect, however, the Commission informed the plaintiff by a letter dated the 12th November, 1945, that the preliminary classification of total loss in respect of the property had been reviewed and that it had been decided to cancel the earlier notification. This letter went on to ask the plaintiff whether she agreed to the reclassification and to explain that when a property was classified as "not a total loss" the Commission would make a cost of works payment. The plaintiff duly agreed to the proposal for reclassification.

Some time after this exchange of letters the plaintiff received another communication from the Commission by which she was informed that it had been decided to revert to the "total loss" classification, the effect of which would, of course, have been to reduce the plaintiff's entitlement from about £5,000 to the assessed amount of £1,616 odd. The plaintiff therefore issued a summons in the Chancery Division to have determined (in effect) the question whether the Commission could go back upon their decision communicated to the plaintiff in the letter dated the 12th November, 1945. Her case was that this letter constituted a determination by the Commission of the kind of payment to be awarded to her under the Act of 1943, that in contradistinction to the notification which had been sent to her earlier this determination was not a preliminary classification of the damage, and that the determination having been made was final and binding on the Commission.

The Act of 1943 contains a fasciculus of sections (ss. 5 to 12 inclusive) in Pt. I which carries the sub-heading "Payments in respect of damage to land; nature, amount and recipients generally." These sections provide for the payment either of a cost of works payment or of a value payment and specify the circumstances in which these payments are to be made respectively, but while implying that there must be a choice by the Commission between one type of payment and the other, they do not in terms provide for a determination to this effect by the Commission. That is done by s. 32, which provides (subs. (1)) that any question arising in giving effect to (*inter alia*) the sections of the Act already referred to "shall be determined by the Commission," and (by subs. (2)) that an appeal shall lie from a determination of the Commission in the cases there stated.

The Commission's case was that it was open to them to review their decisions as often as circumstances made it necessary. It appeared from the evidence that the decision to classify the plaintiff's damage as one entitling her to a cost of works payment had created, or was in danger of creating, an awkward precedent for the Commission, and as a result that decision was reconsidered by a superior officer. The learned judge pointed in his judgment to the inconvenience which would inevitably result if any decision of the Commission was to be open to review by a sequence of officers, each one superior to the one immediately before him and differing in the view that he took of the matter, and he refused to accede to this argument. In his view the question was covered by a proposition which was put to him on behalf of the plaintiff, to the following effect: when Parliament confers upon a body such as the War Damage Commission the duty of deciding or determining any question, the deciding or determining of which affects the rights of the subject, such decision or determination made and communicated in terms which are not expressly preliminary or provisional is final and conclusive, and cannot in the absence of express statutory authority or the consent of the person affected be altered or withdrawn. On this footing the plaintiff was held to be entitled to a declaration that by their letter of the 12th November, 1945, the Commission had finally and irrevocably determined that the damage which the plaintiff's property had suffered was one for which a cost of works payment ought to be awarded.

This is an interesting decision, for it was in no way based upon estoppel, there being no evidence that the plaintiff had changed her position for the worse as a result of the Commission's classification of the loss as one entitling her to a cost of works payment. It is a decision which is wholly based on the Legislature's imposition upon a body, in this case the War Damage Commission, of a duty to make determinations affecting the rights of the subject, and as such is applicable to cases arising under statutes other than the Act

of 1943 where a similar duty is imposed on similar bodies—for example, a local government authority.

Such cases will arise more often under private or local than under public statutes, since it is rare to find provisions in a public Act for the making of decisions by bodies of the kind which come within this principle which do not also either provide for variation or revocation of the decisions made thereunder, or otherwise limit the effect of such decisions. For example, s. 14 of the Town and Country Planning Act, 1947, provides for the grant of permission to develop land by the appropriate planning authority, and *prima facie* the grant of planning permission under this section would come within the principle on which this case was decided; but under s. 21 of this Act the planning authority is given express power to revoke or modify any such permission (subject, of course, to certain provisions for compensation and the like), and with this express power in the Act there is clearly no room here for the application of the principle of *Re* 56 *Denton Road*. In other cases a determination which again would, *prima facie*, appear to fall within this decision is expressly limited in its application, so that it is only within the limited field so specified that the principle of this decision can operate. An example of this kind of provision is to be found in s. 44 (3) of the Finance Act, 1950, whereby trustees of a settlement in connection with which estate duty may become payable under s. 43 of the Finance Act, 1940, may in certain circumstances obtain from the Commissioners of Inland Revenue a certificate of the prospective amount of duty payable, and if they do so they cease to be accountable in their capacity as trustees for any duty in excess of the amount so certified, so far as the transaction to which the certificate relates is concerned. As is well known, an application for a certificate under this subsection often evokes a reply that no duty will, in certain events, be payable, and such a reply is a valuable protection not only to the trustees but to all interested in the settled funds. As regards a certificate under s. 44 (3), its effect is clearly limited in that only the trustees are protected thereby; that appears from the express wording of the subsection. But there is, seemingly, nothing to limit the effect of a reply that no duty will, in the given event, be payable, and such a reply may well bind the Commissioners, on the principle of *Re* 56 *Denton Road*, for the benefit not only of the trustees but of the beneficiaries as well.

But it will be in connection with charges of one kind or another made by local authorities under local Acts that this decision will be most useful. A purchaser from an owner whose land is charged under provisions of this kind has the protection of the system of registration, since these charges are now all registrable and are void against a purchaser for value unless registered, but this does not help the person who is the owner at the time when the charge attaches if he retains the land. Before this decision the only redress which such a person could obtain in the event of a withdrawal or a variation of a determination of the amount charged under the statute was by way of estoppel, and an estoppel is for technical reasons often very difficult to set up. In such cases as this the present decision will be a very helpful one.

"A B C"

Landlord and Tenant Notebook

SPECIES OF CLOSING ORDERS

THE Public Health Act, 1936, the Public Health (London) Act, 1936, and the Housing Act, 1936, being 26 Geo. 5 and 1 Edw. 8 cc. 49, 50 and 51 respectively, were all consolidating measures and all came into force on the same day. One might have expected, then, that in so far as they concerned the condition of dwelling-houses, the public health enactments on the one hand and the Housing Act on the other hand would have divided the territory to be covered neatly between them. Possibly, on the analogy of the memorandum of association and the articles of association of a limited company, the Public Health Acts might have been thought to provide a code designed to protect persons not interested, in a proprietary sense, in a particular dwelling-house, while the Housing Act would concern itself with the position, rights and obligations of occupiers and owners of dwelling-houses against and to each other.

But time has shown that there is in fact a considerable amount of overlapping. The notion that a landlord who interfered with the personal comfort of his tenant could not be dealt with under the "statutory nuisance" provisions of the Public Health Act was disposed of by *Betts* v. *Penge Urban District Council* [1942] 2 K.B. 154; and a more striking illustration of overlapping was afforded by *Salisbury Corporation* v. *Roles* (1948), 92 SOL. J. 618, when notices were served on a landlord, under that Act, to repair houses which had become unfit for human habitation, and he contended that the authority should have invoked the Housing Act (for he wanted to demolish the properties concerned and the Housing Act gives a right of appeal). The Divisional Court was unable to accede to this argument, but adjourned the case in order that the corporation might consider pursuing their remedy under the Housing Act. (See 92 SOL. J. 369 for a general comparison, 92 SOL. J. 643 for a short discussion of the case mentioned.)

The fact that the two codes are not altogether *in pari materia* has, however, been brought out by the decision in *Marela, Ltd.* v. *Machorowski* [1953] 2 W.L.R. 831; *ante*, p. 280 (C.A.). As far as the nature of the proceedings was concerned, they were simply an action for possession by a landlord against a tenant whose tenancy had expired. But, the premises being a controlled dwelling-house, the landlord sought to rely on the Housing Act, s. 156 (1), which restores part of the jurisdiction taken away by the Rent, etc., Restrictions (Amendment) Act, 1933, by enacting that nothing in the Rent and Mortgage Interest Restrictions Acts, 1920 to 1933, shall be deemed to prevent possession being obtained, *inter alia*, of any part of a building or underground room by any owner thereof where *a closing order* is in force in respect thereof.

The defendant was the plaintiffs' direct tenant of some rooms on the ground floor of a house and in April, 1952, proceedings taken by the local authority under the Public Health (London) Act, 1936, had resulted in a closing order being made covering the whole house (it was the roof and the second floor that were affected). This means that the authority must have set the ball rolling by serving (under Sched. V, para. 4) a notice to abate what is one of the "statutory nuisances," namely, "premises in such a state as to be prejudicial to health or a nuisance," set out in s. 82; that that notice was not complied with; and that summary proceedings were taken under the Schedule and a "nuisance order" made. Schedule V to the Act divides (para. 8)

such orders into "abatement orders, prohibition orders or closing orders, and combinations of such orders," and provides: "A closing order may prohibit the use of a dwelling-house for human habitation, and shall be made if, but only if, it is proved to the satisfaction of the court that, by reason of a nuisance, the dwelling-house is unfit for human habitation . . ."

Pausing there, it may be of interest to note that the Act, while it defines "house," does not define "dwelling-house." The defendant undoubtedly held "part of a house let as a separate dwelling" within the meaning of the Increase of Rent, etc., Restrictions Act, 1920, s. 12 (2); but there is no corresponding provision in the Public Health (London) Act. If the point had been taken in the magistrates' court, it may be that the magistrate would have been called upon to consider whether he could and should not make an order limited to the second floor; but the defendant in the action would have had no *locus standi* in the earlier proceedings, the Fifth Schedule already cited directing the authority, in the proviso to para. 4, to serve notice on the owner when "the nuisance arises from any want or defect of a structural character." She may, indeed, conceivably have received the county court summons for possession without even having heard of the closing order (the penalty for *knowingly* and wilfully contravening which is £2 a day for every day on which the offence continues: Sched. V, para. 12).

Possibly influenced by the element of illegality, the county court judge held that the tenancy had been deprived of protection by the Housing Act, s. 156 (1), aforementioned, but the Court of Appeal, having examined the provisions of that statute and those of the Public Health (London) Act, held that there were vital differences. A Housing Act closing order, to begin with, definitely contemplates the prohibition of the user of part of a building, being the remedy available when something less drastic than demolition is required. Under s. 11 the local authority shall, unless an undertaking is accepted that a house "unfit for human habitation, and not capable at a reasonable expenditure of being rendered fit" be rendered fit, "forthwith make a demolition order requiring that the house shall be vacated within a period specified in the order . . . and that it shall be demolished within six weeks after the expiration of that period . . . etc." and then comes s. 12, authorising "the like proceedings in relation to any *part* of a building" of the type dealt with, "subject, however, to the qualification that, in circumstances in which, in the case of a house, they would have made a demolition order, they shall make a closing order prohibiting the use of *the part* of the building . . . for any purpose other than a purpose approved by the local authority."

The order made in *Marela, Ltd.* v. *Machorowski* did not, the Court of Appeal held, answer to the description of an order under s. 12 of the Housing Act; and there was, moreover, it was pointed out by Denning, L.J., this difference: a Public Health Act order is merely one of three means of enforcing a nuisance order; it is only an order made by justices to see that the work is done; while a closing order under the Housing Act is made by the local authority and is made to ensure that the premises are not used, as witness the circumstance that the local authority may contribute towards the removal expenses (and towards compensation for disturbance of business) (Housing Act, 1936, s. 18).

It may be that the contrast is rather exaggerated, and I would respectfully submit that the description of a closing order as a means of enforcing a nuisance order does not tally with the wording of para. 8, which the learned lord justice himself cited, which clearly makes a closing order a *variety* of nuisance order. And it may be pointed out that knowingly (nothing about "wilfully" in this Act) using premises in contravention of a closing order is a penal offence, the penalty this time being £20 plus £5 a day "or part of a day" of the use, or permitted use. Also, even a Housing Act closing order can (s. 12 (1) (*b*)) be revoked if the part of the building has been rendered fit for habitation. Nevertheless, it may fairly be said that the Public Health Act provisions "sound in" nuisance, the authority having the further remedies of doing the work itself (Sched. V, para. 16) and of taking High Court proceedings if they think that summary proceedings would "afford an inadequate remedy" (para. 21).

R. B.

PRACTICAL CONVEYANCING—LVIII

INQUIRIES OF LOCAL AUTHORITIES

Most local searches are now accompanied by the appropriate form of additional inquiries agreed by The Law Society. There is, however, a tendency to forget that answers are given by local authorities to these additional inquiries "in the belief that they are in accordance with the information at present available to the officers of the council who have been consulted, but on the distinct understanding that neither the council nor the clerk is legally responsible therefor." It has often been suggested, very reasonably, that local authorities should accept liability for the accuracy of answers. The point was carefully considered recently by the Committee on Local Land Charges, but the conclusion was reached in the report (Cmd. 8440, para. 16) that the present system should not be changed. The main reason given was that many of the matters dealt with by the additional inquiries are of a nature not susceptible of registration and so a statutory system with penalties would result in a purchaser getting less information than he gets now. Another consideration is, perhaps, that local authorities would probably require a larger fee if they were to undertake legal liability; in a large authority so many different departments must be consulted that the present fee does not adequately cover the time taken.

These notes have been written as the result of a question sent by a reader to the "Points in Practice" department. When acting for a client in the purchase of property our reader forwarded the usual form of inquiry, and one answer given was that an adjoining road had been made up and was taken over by the council as a road repairable by the inhabitants at large. The town clerk appears to have been unusually cautious as, in addition to the printed note quoted above disclaiming liability, he added, after his signature, a further statement that the council accepted no responsibility if the information should prove inaccurate. Some months afterwards the council served notice of their intention to carry out works on the road under the Private Street Works Act, 1892, and the purchaser is faced with the prospect of paying a proportion of the charges therefor. The council now admit that their reply to the inquiry was wrong.

In these circumstances one would be inclined first to investigate very carefully whether or not the road is repairable by the public. If it is not, then it is difficult to see how the unfortunate purchaser can have any cause of action. In view of the clear statements on the form one can scarcely suggest there is any ground for action against the council or any of the officials concerned.

One cannot avoid feeling sympathy for the purchaser. His solicitor took proper steps to protect him but he is nevertheless subject to an unexpected liability. Assuming that the search was made before contract he might well have

refused to purchase at the same price if he had known of the potential liability for road charges. On the other hand, if he had bound himself by contract before the answer was known to him he has not been misled by it (although he may find some difficulty in viewing the matter in this light).

An error of this kind is most unlikely and one hesitates to suggest that any further steps should be taken by solicitors for purchasers. Nevertheless, there is, in most areas, a way of avoiding any chance of error regarding the responsibility for the making up or repair of roads. The Public Health Act, 1925, s. 84, requires every urban authority to cause to be prepared a list of the streets within their district which are repairable by the inhabitants at large; the section may be applied by order to rural districts. Such lists are open to the inspection of any person without payment. Consequently, although one cannot recommend the action in normal cases, inspection of the list could be carried out if it was apparent that the liability for road charges might be serious. As there is a statutory obligation to keep this list a local authority could scarcely allege its inaccuracy against anyone who inspected it and purchased property in reliance on it.

In mentioning these points perhaps one should add a reminder that in connection with recently erected houses a deposit may have been made under the New Streets Act, 1951, intended to cover the liability for road charges (see the discussion in 95 SOL. J. 540 *et seq.*).

LEASES OF BUILDING SITES

Now that building licences are granted in appreciable numbers, a well-known problem is arising in a new form. Most readers will remember the discussion (96 SOL. J. 525 *et seq.*) of the difficulties arising on assignment of the lease of a house if the ground (or similar) rent exceeds two-thirds of the rateable value. In such a case the house is normally subject to the Rent Restrictions Acts (the rateable value being within the prescribed limits and no particular exemption applying), with the result that the Landlord and Tenant (Rent Control) Act, 1949, s. 2 (2), provides that, with a few minor exceptions, a premium may not be required as a condition of assignment. For various reasons many rents intended to be ground rents have been over two-thirds of the rateable value and so it has not been possible to obtain a premium on assignment, although the leasehold interest has a market value which the tenant might reasonably wish to realise.

Several readers have recently raised points on the application of s. 2 (2) of the 1949 Act to new houses intended to be erected under building licences. It appears that very often a plot of building land is offered on a long lease at a rent which will be more than two-thirds of the rateable value of the house intended to be erected on the plot. Consequently, it is thought that in such cases s. 2 (2) will prevent the taking of a premium on assignment of the lease even though that premium does not exceed the maximum controlled price for the house enforceable under the Building Materials and Housing Act, 1945.

It might be argued that as a vacant plot of land is first let the rent payable should not provide the test whether there is a protected tenancy of the house. Nevertheless, the opinion is generally accepted, supported by some authority, that as soon as a house is erected control under the Rent Acts operates. This means that the leasehold interest cannot be sold without commission of an offence under the 1949 Act.

Various suggestions have been made for avoiding this state of affairs. The obvious solution is to ensure that the rent of the land does not exceed two-thirds of the anticipated rateable value of the house. In most cases the value of the land will be such that the rent charged on a long lease will be much less than two-thirds. On the other hand, if a small house is to be erected on valuable land, particularly if the roads are already made and sewers and other services are readily available, an economic rent of the land may be about the same as the probable rateable value. Even if this is so it will be possible to avoid the problem caused by s. 2 (2) by paying for the land in part by a capital sum. The rent should be arranged at such a figure that it will be less than two-thirds of the rateable value of the intended house, the premium on grant of the lease making up the balance of the value of the land. The tenancy will then be outside the protection of the Rent Acts (Increase of Rent Act, 1920, s. 12 (7)), and so s. 2 (2) will have no application. In this way the unnecessary and artificial restriction will be avoided.

J. G. S.

DIVORCE IN RURITANIA

"DIVORCE in England," said the Lord Chief Justice of Ruritania with an indulgent smile, "is the most complete illustration of the English adherence to precedent. Because in the days of Queen Victoria divorce incurred the most appalling social penalties, you still look upon divorce as a punishment. You talk of the guilty and the innocent party. You hold up your hands in horror at the very thought of collusion between these two parties, just as much as you would if you heard of someone faking a crime. I must admit," he added, "that I was a long time seeing the light myself. We lawyers look back into the past so much that we are sometimes slow to notice social changes that have occurred under our noses and their consequent effect on the law."

It all began, he told me, when by accident one day he talked to a solicitor. The solicitor mentioned that he had been acting for the respondent in a divorce case and that his client was very pleased with the result. The Lord Chief Justice had inquired whether it had been a very long hearing and the solicitor had replied that it had only taken five minutes. Only then did the Lord Chief Justice come to realise that in a divorce the loser might be as pleased as the winner.

He then began to prepare statistics of all divorces in Ruritania and to reason out certain conclusions from this evidence. There were a few that fitted into the category of what he described as "a classic divorce," that is to say, cases in which an outraged and innocent spouse set out in anger to hurl the other one ignominiously from the ranks of matrimony. In other cases, he found an innocent spouse rather reluctantly embarking on the process of divorce out of a genuine feeling that the other should be free to remarry. In still further cases, both parties might have behaved in a thoroughly licentious fashion, paying little regard to their matrimonial oaths, until one or other of them (it did not seem to matter which) went to court and after making a clean breast, or relatively clean breast, of his or her offences, brought the marriage to an end.

Pursuing his inquiries, the Lord Chief Justice came upon many stories of would-be litigants who were never able to get as far as the courts. These people were drawn from that unfortunate class which regularly honoured its matrimonial obligations. They never committed adultery, they never deserted one another and they were never cruel. However dismally and completely the marriage might have failed, if the partners belonged to this class of good and virtuous citizens, they were left with no possibility of obtaining a divorce unless one of them elected to go incurably mad.

The Lord Chief Justice had tumbled upon what he termed "a thoroughly immoral paradox." "Here was I," he continued, "presiding over a Bench of the most learned judges who, in the eyes of the public, represented the law and the State. Here we sat in our dignity, vested with the monopoly of the precious power of dissolving marriages. If one of the parties to a marriage had behaved badly, we dissolved it. If both parties to the marriage had behaved badly, we dissolved it. But if both parties had behaved virtuously,

we refused them even a hearing. We ignored the truth that a divorce frees two people. We pretended to be dispensing justice only to the one that came before the court, and pretended further (against all the evidence) that this one had to come in a white sheet. In a word, we denied relief to virtuous couples, but made it freely available to couples of weaker character. I perceived that no system of law could continue to command general respect while this continued."

As a result the laws of divorce in Ruritania were reversed. It was first of all laid down as a general proposition that the only people who were entitled as of right to come to the court and ask for a divorce were those who could prove that they had honoured their marriage vows perfectly. For this, each party to the marriage had to produce twelve witnesses prepared to swear that to the best of the witness' knowledge and belief the spouse in question had never committed adultery, never deserted the other and never been cruel. Assuming that both parties could satisfy the court in this way and assuming further that they could satisfy the court that adequate financial terms had been agreed and complete provision made for the welfare of the children of the marriage, they were entitled (on their joint request) to a divorce. This was not done on the request of one party alone, but only on the agreed request of both. In such cases, both parties were immediately free to remarry.

Unilateral divorce, that is to say, divorce on the request of one party alone, was still permitted, subject to the usual proofs of innocence, provided that proofs of misbehaviour on the part of the other were also produced. In such a case, the innocent spouse became free to remarry but the guilty spouse did not, except with the special permission of the court. The guilty party entered upon the new status of a divorced person, which was noted against his name in the births register kept by the Registrar General. His or her status was publicly advertised in the *Gazette* and in one local newspaper circulating in the area where the divorced person lived. At any time after a lapse of three years the divorced person was entitled to appear before the court and, on producing twelve witnesses to swear to his or her good behaviour since the date of the divorce, might have the disability removed. The court retained the widest discretion in this matter. In exceptional circumstances application might be made before the expiry of three years.

Divorce between two parties, both of whom had offended against the matrimonial laws, still remained a possibility, but the granting of divorces in such cases was most jealously restricted. A common course was for the judge to adjourn the case for a year, when he thought a divorce might be permissible, in order to enable the petitioner at the end of that time to bring forward evidence of good behaviour. There was not always such an adjournment and in special cases deserving of sympathy the judges still retained the power to grant an immediate divorce.

"It took a few years," said the Lord Chief Justice, "but in time the fact generally came to be understood by the public that misbehaviour did not pay. We found that mutual divorces between virtuous spouses were relatively rarely requested, divorce figures as a whole dropped to a small fraction of their former number, and bit by bit the public came to understand that the law accorded to the adulterer a frown and not a smile. They even felt that this was rather sensible."

E. A. W.

HERE AND THERE

DEVOURING A DOCUMENT

A LITTLE while ago Lord Justice Jenkins reminded us that Salmond on Torts is not (as the stranger to the law might imagine) a sort of savoury. Nor, we may add, do any conveyancers of our acquaintance regard a "root of title," however satisfying, as an edible vegetable, while the "double portions" so well known to Chancery practitioners have, alas, no gastronomic significance, any more than the "hotch-pot," that family standby into which so many interesting ingredients may be thrown. All the same there is hardly any limit to what human beings will swallow once they are in a suitable frame of mind. Chemists and scientific dieticians, whose progressive insight has reduced to terms of chemical formulæ and nutritional intake the occasions which the obscurantist reactionaries among us still insist on regarding as meals, have offered us the most unexpected substitutes for the animal and vegetable substances which satisfied the appetites of our primitive and barbaric grandparents. But we cannot recall that paper has so far figured among the up-to-the-minute delicacies of the atomic age, and those who are said to devour books and newspapers usually do so figuratively, save in so far as the enveloping newsprint occasionally adheres to the morsels we so thankfully carry home from the butcher or the fishmonger. It is not, therefore, to greed or gluttony that we must look for an explanation of a sudden outbreak of document swallowing recently reported from Italy. The most picturesque incident occurred in Bari, where a notary had occasion to read over to a lady an act of renunciation of some property belonging to her. She interrupted him with a request to be allowed to examine it and, having got it into her hands, she proceeded, in the most literal sense, to eat her own words and started to devour the document. So far as he was able, the man of law hastened to take the words out of her mouth and called in the police to the defence of the salvaged fragments, no doubt with a view to having her bound over to keep the piece. A similar case is reported from Rome, where a client, again a lady, pitting her will against the deed presented to her, proceeded to get her teeth into it with destructive effect.

ENGLISH ALTERNATIVE

IN this country such episodes are rare in the offices of solicitors and commissioners for oaths, but it appears that in Italy the practice is sufficiently common to be specifically mentioned in the penal code as an offence. This is surprising because, though the gesture is full of dramatic significance, it cannot be said to possess in a high degree the operatic possibilities so dear to the Italian heart, for few situations can be imagined more fatal to the full effectiveness of an aria as for the singer to attempt it at a time when he or she is handicapped by a mouthful of legal stationery and may be negotiating the additional hazards of stamps and seals and red tape. Such mastication would not lend itself readily to staccato effects, and breath control would undoubtedly be impaired. Time was when the ladies carried about their persons an inviolable sanctuary into which any document inserted (preferably with a low, mocking laugh) was deemed to have become finally inaccessible. But perhaps the plunging necklines, which are so much in evidence in Italian films, have changed all that, so that female resourcefulness must rely on interior lines of communication and a perfect digestion. It is hard to imagine how a well conducted English solicitor would react to such an occurrence in his office. He could not wait on the dilatory procedure of an order for delivery up, and a mere *subpœna duces tecum* would not essentially alter the situation of the missing document. Having lost his document, he might perhaps produce evidence of the lady's contents or, less humanely, he might employ counsel to turn her inside out in cross-examination. The long-term answer lies, of course, in a steady improvement in the quality of legal stationery, the production of a parchment so tough as to be indestructible by tooth and intractable to the gullet. One can only suppose that the artistic sensibilities of the Italians have led them to engross their legal documents on stationery

of great beauty and delicacy as tender as a valentine. But the Englishwoman, if not violently dramatic, generally has a basis of practical good sense. If she felt that a document in a solicitor's hands needed eating she would probably call on him with her Alsatian or her boxer or her spaniel, who could manage the job with unobtrusive efficiency, snatching it quietly while she distracted the attention of the man of law with intelligent conversation, perhaps admiring the binding on his Law Reports or his engraving of Lord Chancellor Westbury. And the English attitude towards dogs being what it is, he would probably pat the sagacious animal and say it didn't matter a bit. If a dog is allowed one free bite of a human, he can surely be allowed one free document without *scienter* (or knowledge of a vicious propensity) being necessarily attributed to his owner. So all the best English instincts would be satisfied. Rover would have had a happy afternoon. His mistress would have retained her charm and glamour. The deed would be chewed more thoroughly and more quickly than most women could manage. Also the law would have been defeated without being openly defied. There's no point in keeping a dog if you eat your documents yourself.

RICHARD ROE.

BOOKS RECEIVED

A Verification of the Faculty Jurisdiction. By PETER WINCKWORTH. 1953. pp. v and 90. London: S.P.C.K. 5s. net.

Simon's Income Tax, Second Edition. Issue No. 2. New pages for volume 4 and Service Volume. London: Butterworth & Co. (Publishers), Ltd.

Are Findings Keepings? By CLAUD MULLINS. 1953. pp. 159. London: Frederick Muller, Ltd. 10s. 6d. net.

A First Book of English Law. Second Edition. By O. HOOD PHILLIPS, M.A., B.C.L. (Oxon) of Gray's Inn, Barrister-at-Law. 1953. pp. xxiv and (with Index) 293. London: Sweet and Maxwell, Ltd. 17s. 6d. net.

Salmond on the Law of Torts. Eleventh Edition. By R. F. V. HEUSTON, M.A., of Gray's Inn and King's Inn, Dublin, Barrister-at-Law. 1953. pp. lx and (with Index) 794. London: Sweet & Maxwell, Ltd. £2 2s. net

Law Reform and Law Making. A Reprint of a Series of Broadcast Talks. By C. J. HAMSON, A. L. GOODHART, K.B.E., Q.C., The Rt. Hon. Lord Justice DENNING, E. C. S. WADE, D. R. SEABORNE DAVIES, G. L. WILLIAMS, Sir CECIL CARR, K.C.B., Q.C. 1953. pp. 91. Cambridge: W. Heffer & Sons, Ltd. 5s. net.

Oyez Practice Notes, No. 20: Conveyancing Costs. Second Edition, 1953. By J. L. R. ROBINSON. 1953. pp. (with Index) 95. London: The Solicitors' Law Stationery Society, Ltd. 7s. 6d. net.

The Honourable Society of Osgoode Hall. By C. H. A. ARMSTRONG, Q.C., with an appendix on The History and Architecture of the Fabric by E. R. ARTHUR, M.A., F.R.A.I.C., F.R.I.B.A. 1952. pp. 60. Toronto: Clarke, Irwin & Co., Ltd. $3.00 net.

"Oyez" Income Tax Table. 2d. to £250,000 at 9s. in the £. 1953. London: The Solicitors' Law Stationery Society, Ltd. 9d. post free.

"Taxation" Manual. Seventh Edition. Compiled under the direction of RONALD STAPLES, Editor of "Taxation." 1953. pp. xx and (with Index) 431. London: Taxation Publishing Co., Ltd. 20s. net.

"Current Law" Income Tax Acts Service. ["Clitas"]. Release 9. London: Sweet & Maxwell, Ltd.; Stevens & Sons, Ltd. Edinburgh: W. Green & Son, Ltd.

The Profits Tax. Second Edition. By ROY BORNEMAN, Q.C., of Gray's Inn, and PERCY F. HUGHES, Incorporated Accountant, Assistant Editor of "Taxation." 1953. pp. xxix and (with Index) 332. London: Taxation Publishing Co., Ltd. 21s. net.

REVIEWS

Glen's Public Health Act, 1936. Sixteenth Edition. Edited by The Hon. Sir PATRICK REDMOND BARRY, M.C., one of Her Majesty's Judges of the Queen's Bench Division, and H. A. P. FISHER, M.A., of the Inner Temple, Barrister-at-Law. 1952. London: Eyre & Spottiswoode. £3 15s. net.

Although the preface states that this book sets out the law at 29th February, 1952, it was not published until 30th January, 1953. This delay is too great and its effect is illustrated by the insertion of a note drawing attention to statutes and regulations which came into force in the meantime, such as the Children and Young Persons (Amendment) Act, 1952, which took effect on 1st October, 1952, and various regulations which came into force as early as 7th July, 1952.

The book consists substantially of an annotated copy of the Public Health Act, 1936, which occupies 524 of the total of 745 pages. A few other statutes, such as the Public Health (Drainage of Trade Premises) Act, 1937, and the Water Act, 1945, are printed in an appendix, but the notes relating to them are inadequate and are printed in an unsatisfactory manner, and so the book cannot be regarded as, and in fact is not claimed to be, a complete statement of the law of public health. The index is too brief to be adequate.

The work is very good in two respects. First, the explanations of the purposes served by the important sections of the 1936 Act are very clear and will be of great help to a user who is not normally concerned with the subject. References to earlier statutory provisions are numerous; this is an advantage, as the provisions of the present statute and the reasoning behind earlier decisions often cannot be explained adequately in any other way. Secondly, the cross-references between relevant statutes and regulations are complete and are accurate, at least so far as they can be tested quickly.

On the other hand, it is doubtful whether this book, consisting primarily of an annotated copy of one Act of Parliament, is sufficiently useful to justify continued publication. Reasons for doubt are illustrated by the number of sections which are printed but indicated as having been repealed and by the rather lengthy explanations which have been inserted of such Acts as the Children Act, 1948. The notes are very helpful, but somewhat similar ones can be found elsewhere. For instance, the notes to s. 53 of the 1936 Act (which deals with buildings constructed of short-lived materials) are not as complete, nor have they the same practical value, as those in Lumley.

The conclusion is that this publication is accurate and would be of considerable assistance to one who wishes to have a guide to the 1936 Act without making use of a work extending outside the scope of that Act. It is doubtful, however, whether it will serve any useful purpose where other more general books are available.

Oyez Practice Notes No. 33: Family Provision Practice. By SPENCER G. MAURICE, of Lincoln's Inn, Barrister-at-Law. 1953. London: The Solicitors' Law Stationery Society, Ltd. 8s. 6d. net.

The amendment of the Inheritance (Family Provision) Act, 1938, by the Intestates' Estates Act, 1952, whereby its provisions were extended to cases of intestacy, has greatly increased the importance of the Act to solicitors. The

appearance of this short book will therefore be welcomed by practitioners as a guide which will help them when having to advise the all too frequent client who considers—sometimes with justification—that he (or, more often, she) has been left less well off than was to be expected. Beginning with an examination of the qualifications of persons entitled to apply under the Act, the author proceeds to consider, under separate chapter headings, what amounts to "reasonable provision," orders for maintenance, what "provision" the court has power to make and what the court will take into consideration. As befits a practical guide, the procedure for making applications under the Act is explained in detail, while the chapter entitled "Evasion and Contracting out of the Act" will be of value to conveyancers, as also the precedents of wills designed to give effect to the wishes of a testator desiring to place on record his reasons for excluding persons entitled to make application under the Act. The use of forms such as those given in this book should materially assist the executors in seeing that the court has before it all relevant facts when considering an application. A testator bent on evading the Act will, however, often prefer to execute a voluntary settlement as suggested in the text, and the inclusion of a precedent for such a settlement would be very convenient and should be considered for the next edition. Further, although a reference is given to the appropriate volume of the Encyclopaedia of Court Forms for suitable forms for use in applications under the Act, the inclusion of a simple form of originating summons would be of considerable use. In view of the time limit for application, such a form is often required as a matter of urgency at times when the Encyclopaedia may not be readily available.

The British Health Service. By DEREK H. HENE, M.A. (Cantab.), Barrister-at-Law, of the Inner Temple and the South Eastern Circuit. 1953. London: Shaw & Sons, Ltd. 15s. 6d. net, de luxe edition 21s. net.

This handy volume comprises in 122 pages of narrative text a mass of information set out in an attractive and readable style. The appendices occupy another fifteen pages and include a list of charges. The work is not intended to be a text book for the learned nor a partisan publication in any controversy. The learned author's purpose is to acquaint the reader with the organisation of the National Health Service, the help it offers and the patient's position. A complete list is given of all the services available to the citizen and examples of the forms he may be required to fill in. Practising lawyers will be specially interested in Chapter 8, which deals with the protection of the public, and in Chapter 9, which gives an example of the case history of an accident and the costs chargeable. This book is far from being a compilation of dull facts and is written with a sympathetic understanding of the human problems involved. It should have a good reception not only in this country but among many readers overseas both in the Commonwealth and elsewhere.

Notable British Trials Series, Vol. 77: The Trial of Peter Barnes and Others. (The I.R.A. Coventry Explosion of 1939.) Edited by LETITIA FAIRFIELD, C.B.E., M.D., Barrister-at-Law. 1953. London: William Hodge and Co., Ltd. 15s. net.

Examined in the light of the history of the Fenian movement, the spiritual predecessor of the I.R.A., this is a remarkable case. The editor of this volume so examines it, placing it in its political context. The whole constitutes an episode in the story of Ireland of which the English are surprisingly ignorant. The astonishingly futile and inept incident, of which the trial here recorded was the climax, touches us most nearly in point of time, yet far more "notable," whether from the point of view of intrinsic significance or even mere picturesqueness, were the remoter trials of Barrett, for the murder of the persons killed in the Clerkenwell Prison explosion, and of the men concerned in the Manchester prison van rescue involving death of the officer guarding it. The memory of the Coventry explosion has been blotted out by the far greater tragedy which was so soon to overtake the city by hostile bombardment, and because of that it is well that it should be revived and put on record. The editor has done her work well with sympathetic appreciation of the human drama involved both as regarded the victims and the men in the dock.

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Incorporated Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

CEYLON: CRIMINAL BREACH OF TRUST AS AGENT: NO AGENCY BUSINESS: SUBSTITUTED CONVICTION

Cooray *v.* R.

Earl Jowitt, Lord Porter, Lord Tucker, Lord Asquith of Bishopstone, and Mr. L. M. D. de Silva

21st April, 1953

This was an appeal, by special leave, by M. E. A. Cooray from a judgment of the Court of Criminal Appeal of Ceylon, dated 24th July, 1951, which dismissed his appeal from his conviction in the Supreme Court of Ceylon on 16th October, 1950, of criminal breach of trust as an agent contrary to s. 392 of the Ceylon Penal Code and in respect of which he was sentenced to five years' rigorous imprisonment. The appellant was the president of the Salpiti Korale Union, a body which supplied goods to retail stores of the Union through wholesale depots. The method by which the business was carried on was that the Colombo Co-operative Central Bank advanced moneys to member business societies to enable them to buy their stocks. Those advances were repaid weekly, and except in the case of small sums should have been so paid by money orders and cheques and not in the shape of cash. The Central Bank in its turn paid in the money orders, cheques and any cash which might have been received in that firm to its account with the Bank of Ceylon. The appellant was also vice-president of the Co-operative Central Bank, and president of the committee which controlled one of the Union's depots at Moratuwa. Sums due from that depot had to be deposited by the manager of the depot with the Co-operative Central Bank. The appellant appeared to have instructed the manager, instead of following the prescribed routine, to collect large sums from the retail stores in cash and hand them over to him (the appellant) to be transmitted to the bank. The manager acted on those instructions and transferred the cash which he had collected to the appellant, who, instead of paying it over, appropriated the cash and substituted for it his own cheques for the amount due. All cheques received by the Central Bank should have been immediately sent to the Bank of Ceylon for collection. The appellant, however, as vice-president of the Central Bank, ensured that in many instances his cheques were not sent forward for collection, with the result that when, ultimately, his activities were discovered, some thirty-five cheques had not been presented. Those cheques were some of those which the appellant had substituted for the cash which he had received from the manager of the depot, and it was for misappropriation of Rs. 57,500, being part of that cash, that the appellant was ultimately convicted for criminal breach of trust as an agent. By s. 392 of the Penal Code: "Whoever, being in any manner entrusted with property, or with any dominion over property . . . in the way of his business as a banker, merchant, factor, broker, attorney, or agent, commits criminal breach of trust in respect of that property, shall be punished" as provided in the section. And by s. 389: "Whoever commits criminal breach of trust shall be punished with imprisonment . . . for a term which may extend to three years . . ."

LORD PORTER, giving the judgment of the Board, said that their lordships had first to determine whether the facts disclosed constituted a criminal breach of trust as an agent. The question

was whether the appellant was a member of one of the classes embraced in s. 392. The reasoning in *R.* v. *Portugal* (1885), 16 Q.B.D. 487, at p. 490, was directly applicable to the present case, and accordingly before a person could be convicted of criminal breach of trust as an agent contrary to s. 392, it must be established that he was a person who carried on an agency business—not merely acted in a particular transaction and a casual agent—and that the offence charged was committed by him in the way of his business as such agent. In the present case the appellant was clearly not carrying on the business of an agent. Accordingly their lordships (on 3rd March) had humbly advised Her Majesty to allow the appeal. The appellant had, however, plainly been guilty of a criminal breach of trust under s. 389 of the Code, and a conviction under that section would be substituted for that under s. 392 which was discharged, and in respect of the offence under s. 389 the appellant must serve a sentence of three years' imprisonment less the period of time during which he had been imprisoned under the conviction appealed from.

APPEARANCES: *Sir Frank Soskice*, Q.C., *Dingle Foot* and *Carl Jayasinghe* (*Barrow, Rogers & Nevill*); *Sir Hartley Shawcross*, Q.C., *Frank Gahan*, Q.C., and *Walter Jayawardena* (*Burchells*).

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law] **[2 W.L.R. 965**

HOUSE OF LORDS

INCOME TAX: CHARITY: STATUTORY DUTY: PAYMENT OF ANNUAL SUMS: DEDUCTION OF TAX

Inland Revenue Commissioners *v.* City of London (as Epping Forest Conservators)

Lord Normand, Lord Oaksey, Lord Morton of Henryton, Lord Reid and Lord Cohen

20th April, 1953

Appeal from the Court of Appeal (96 SOL. J. 410).

About £250,000 was spent by the City of London between 1871 and 1878 in acquiring rights in Epping Forest to establish it as an open space for the public benefit. The Epping Forest Act, 1878, passed at the instance of the corporation, provided that it should be managed by the corporation as conservators, in which capacity they constituted a separate entity in law, on whom the duty of maintaining it for the public enjoyment was placed. Rents, licence fees, tolls, the sale of wood, and fees for the use of a golf course provided the revenue of the conservators. The Act required the corporation to contribute, in such amounts as should be necessary, to the income of a fund to be applied to the expenses of the conservators. A committee established under the Act, consisting of members of the Common Council and the verderers of the forest, exercised all the powers of the conservators. Each year the corporation made a contribution to make good the deficiency on the income of the conservators and that contribution was paid wholly out of profits or gains on which the corporation had paid tax. In making the payment in the year 1948-49 the corporation deducted a sum for income tax. The present appeal arose out of a claim by the respondents for exemption from income tax for the year 1948–49 under s. 37 (1) (*b*) of the Income Tax Act, 1918, and for recovery from the Inland Revenue of the sum of £7,202 15s. 6d., which had been deducted (professedly under r. 19 (1) of the All Schedules Rules) by the corporation in paying to the respondents a contribution under s. 39 (1) of the Epping Forest Act, 1878, for the year ended 31st March,1949, of £16,006 3s. 4d. The Court of Appeal decided in favour of the respondents, reversing a judgment of Donovan, J., and reaffirming the determination of the Special Commissioners. The substantial question was whether the contribution paid to the respondents was an "annual payment" within the meaning of r. 1 of Case III of Sched. D to the Income Tax Act, 1918. If the payment of the contribution fell within the words "annual payment," it followed on the facts of the case that the corporation was entitled under r. 19 (1) of the All Schedules Rules, on making the payment, to deduct and retain a sum representing the amount of the tax thereon, and that the conservators of Epping Forest, the respondents, could recover from the Inland Revenue the amount of the tax deducted. These consequences inevitably followed from these findings, which were common ground: (1) that the conservators, the recipients of the sum, were a separate legal persona from the City of London Corporation which paid them, though the members of the two bodies were the same; (2) that the contribution was paid wholly out of profits or gains on which the corporation had paid income tax; and (3) that the conservators were a body established for charitable purposes only, and therefore exempt from income tax on "annual payments" forming part of their income.

LORD NORMAND said that the Special Commissioners had held that the contributions were "annual payments." They had stated in their conclusions: "In our opinion, once it is conceded that the corporation's contributions to the Epping Forest Fund are properly regarded as payments (in account) to a separate body of persons (namely the conservators), the proper view of ss. 39 and 41 of the Epping Forest Act, 1878, is, not that the corporation discharges debts of the conservators, nor that it pays a mere 'balancing' sum in the nature of a trade receipt against which must be set expenses, but that it makes contributions to the income of the conservators, and that, out of their independent income and these contributions, the conservators discharge their own debts. In other words, we think a reasonable interpretation of these sections is that the corporation is required to supplement the income of the conservators, so as to ensure that such income, so supplemented, shall be sufficient to enable the conservators to meet all expenditure on revenue account incurred in the performance of their statutory duties . . ." He was satisfied with the way in which the Special Commissioners had dealt with the question and with their reasons. He was also in agreement with much that was said in the judgment of the Court of Appeal, although he had differed from it on the actual ground of the decision. The sum, in his opinion, was in no different position from a sum (having the requisite quality of recurrence) paid without conditions or counter stipulations out of taxed income under a covenant by a private individual to any charitable body. The Crown would neither admit nor deny that such a payment would be an annual payment to the charity within the meaning of Case III, or that the party paying it would be entitled to retain the tax, or that the charity would be entitled to recover it. If the payment under covenant were made by an individual to a body not a charity it could still be an annual payment, but the question whether it was in return for some consideration would probably be much more prominent and acute. If it were an annual payment the payer would be entitled to deduct tax under r. 19 but the payee would not be entitled to recover the tax. The cases of *Lincolnshire Sugar Co.* v. *Smart* [1937] A.C. 697 and *Pontypridd and Rhondda Joint Water Board* v. *Ostime* [1946] A.C. 477, on which the appellants relied, were distinguishable. The sums in question were annual payments within r. 1 of Case III of Sched. D, and the appeal should be dismissed.

LORD OAKSEY, LORD MORTON OF HENRYTON, LORD REID and LORD COHEN concurred.

APPEARANCES: *Sir Lionel Heald*, Q.C. (A.-G.), *King*, Q.C., and *Sir Reginald Hills* (*Solicitor of Inland Revenue*); *Tucker*, Q.C., *Mustoe*, Q.C., and *R. R. D. Phillips* (*Comptroller and City Solicitors*).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] **[1 W.L.R. 652**

TOWN AND COUNTRY PLANNING: WHETHER "WORKS" INCLUDES PRELIMINARY DEMOLITION: VALIDITY OF LIMITED PLANNING PERMISSION GRANTED WITHOUT REASONS STATED

London County Council *v.* Marks & Spencer, Ltd.

Lord Normand, Lord Oaksey, Lord Morton of Henryton, Lord Reid and Lord Cohen

20th April, 1953

Appeal from the Court of Appeal ([1952] Ch. 549).

In 1938 the respondent company applied to the appellant council under the Town and Country Planning Act, 1932, and the order made thereunder, for permission to erect certain specified buildings in accordance with the terms of a building agreement relating to a site on which other buildings were standing. Permission was granted in 1938 for the erection of the buildings, subject to a condition that the work should be completed within eighteen months, failing which the consent was to become void, and to other conditions. No statement was given of the reasons for imposing such conditions. In June, 1939, the company entered into a contract with demolition contractors for clearing the site. This work was completed by August, 1939, but no contract for the erection of the new buildings was made before the outbreak of war in September. The company never abandoned the intention to erect the buildings, but nothing more was done until November, 1948, when they notified the council that they proposed to proceed. The council, purporting to act

under the Town and Country Planning Act, 1947, refused to sanction further work, and the Central Land Board refused exemption from development charge. The Court of Appeal held, reversing Harman, J.: (1) (Evershed, M.R., dissenting) that the works of demolition carried out constituted "works for the erection or alteration of a building" within the meaning of s. 78 (1) of the Act of 1947; and (2) that the condition as to time imposed in the planning permission was void, the council not having stated their reasons in writing as required by s. 10 (3) of the Act of 1932. The council appealed. By s. 78 (1) of the Act of 1947: "... where any works for the erection or alteration of a building have been begun but not completed before the appointed day [1st July, 1948] then if immediately before that day those works could have been completed in conformity with permission granted ... planning permission shall, by virtue of this section, be deemed to be granted ..." By s. 10 (3) of the Act of 1932: "Where an application to develop land is made ... the authority may ... grant the application unconditionally or subject to such conditions as they think proper to impose, or may refuse the application; and they shall be deemed to have granted the application unconditionally unless within two months from the receipt thereof ... they give notice ... that they have decided to the contrary, stating their reasons for so doing."

LORD NORMAND said that, on the point under s. 78 (1) of the Act of 1947, the company contended that "works for the erection ... of a building" comprised the totality of the physical works upon the site necessary to carry out their building project as authorised in 1938, beginning with the work of demolition and ending with the completion of the building. The council contended that the words referred to building operations of a constructional nature only. On that question he (his lordship) was wholly in agreement with the reasoning and conclusions in favour of the company expressed by Jenkins and Morris, L.JJ. On the question under the Act of 1932, the company had manifestly failed to comply with the condition laid down as to time. The council contended that "decided to the contrary" meant "decided not to grant the application." The company contended that it meant "decided not to grant the application unconditionally." The Court of Appeal unanimously adopted the latter construction, and he (his lordship) respectfully agreed with their conclusion and reasons; no other view was tenable. Accordingly, the council must be deemed to have granted planning permission unconditionally, and the appeal failed.

The other noble and learned lords concurred. Appeal dismissed.

APPEARANCES: *G. Lawrence*, Q.C., and *H. E. Francis* (*J. G. Barr*); *A. Capewell*, Q.C., *J. R. Willis* and *V. M. C. Pennington* (*J. C. Parry*); *D. Buckley* (*Treasury Solicitor*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[2 W.L.R. 932**

INCOME TAX: SAVINGS BANK ACCOUNTS OPENED AND EFENCE BONDS PURCHASED FOR INFANTS BY FATHER: "SETTLEMENT"

Thomas *v.* Marshall (Inspector of Taxes)

Lord Normand, Lord Oaksey, Lord Morton of Henryton, Lord Reid and Lord Cohen

20th April, 1953

Appeal from the Court of Appeal ([1952] 1 T.L.R. 1419; 96 SOL. J. 326).

The taxpayer in 1933 and 1936 opened Post Office Savings Bank accounts in the names of his two children, and thereafter paid in sums from time to time, and withdrew sums which were expended for their benefit. In 1945 he purchased £1,000 3 per cent. defence bonds for each child. All moneys so expended were absolute and unconditional gifts to the children. The Inspector of Taxes treated the interest on the savings bank accounts (exclusive of interest upon interest) and the interest on the defence bonds as being income of the settlor under s. 21 of the Finance Act, 1936, which provides: "(1) Where, by virtue or in consequence of any settlement ... any income is paid to or for the benefit of a child of the settlor ... the income shall ... be treated for all the purposes of the Income Tax Acts, as the income of the settlor ... (9) In this section— ... (*b*) the expression 'settlement' includes any disposition, trust, covenant, agreement, or transfer of assets; (*c*) the expression 'settlor' in relation to a settlement includes any person by whom the settlement was made or entered into directly or indirectly ..." Donovan, J., and the Court of Appeal held in favour of the Crown. The taxpayer appealed.

LORD MORTON OF HENRYTON said that the only question was whether the gifts in question were "settlements" within the meaning of s. 21. They had been held to be such by the commissioners, the judge, and the Court of Appeal, and rightly. Though such gifts would not ordinarily be described as a "settlement," that expression in s. 21 included "any ... transfer of assets"; and there was no escape from the conclusion that the taxpayer had made transfers of assets. The object of subs. (9) (*b*) was to make it plain that "settlement" was to be enlarged to include transactions which would not be regarded as "settlements" within the ordinary meaning of the word. In *Hood-Barrs* v. *I.R.C.* [1947] W.N. 12; 27 Tax Cas. 385, the Court of Appeal held that a gift of shares by a father to two infant daughters was a "settlement" because it was a "transfer of assets," and refused to give that phrase a limited meaning. There was no ground for restricting the natural meaning of the words of s. 21, and arguments to that end based on cases decided under other statutes could not prevail. The intention was to sweep in all kinds of transactions, provided that "by virtue or in consequence" thereof any income was paid to or for the benefit of a child of the settlor.

The other noble and learned lords agreed. Appeal dismissed.

APPEARANCES: *Sir Andrew Clark*, Q.C., and *Charles Lawson* (*Tyrrell Lewis & Co.*); *Sir Reginald Manningham-Buller*, Q.C. (S.-G.), *J. Pennycuick*, Q.C., *J. H. Stamp* and *Sir Reginald Hills* (*Solicitor of Inland Revenue*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[2 W.L.R. 944**

INCOME TAX: EMPLOYMENT EXERCISED IN UNITED KINGDOM: SALARY PAYABLE ABROAD

Bray (Inspector of Taxes) *v.* Colenbrander

Lord Normand, Lord Oaksey, Lord Morton of Henryton, Lord Reid and Lord Cohen

20th April, 1953

Appeal from the Court of Appeal (96 SOL. J. 548).

The London correspondent of a Dutch newspaper was a Dutch national, but for the purpose of his employment resided in England. Part of his salary was paid directly to his family in Holland, and the remainder was remitted to him in London through his employers' bank. He admitted liability to United Kingdom income tax for the amounts so remitted. The Crown claimed that he was assessable under Schedule E in respect of the whole amount of his salary. Danckwerts, J., and the Court of Appeal dismissed that claim. The Crown appealed.

LORD NORMAND said that the Crown's contention was that the respondent was assessable as a person residing in the United Kingdom in respect of the whole of the annual profits accruing from an employment in the United Kingdom under Case II of Schedule D, which, by s. 18 of the Finance Act, 1922, became chargeable under Schedule E. The respondent maintained that he was assessable under Case V of Schedule D; that the measure of assessability was the actual sum received annually in the United Kingdom under r. 2, and he claimed the benefit of the exception in s. 18 (1) of the Act of 1922. It was well settled that "possession" in Case V included employment, and that to fall within Case V the employment must be entirely outside the United Kingdom. The respondent's case was that an employment was entirely outside the United Kingdom if the place of payment was outside, and that the place where the duties of the employment were performed were irrelevant. It was admitted that that had been decided in *Bennett* v. *Marshall* [1938] K.B. 591, which had been followed below in the present case. The present appeal, therefore, was brought for the purpose of reviewing *Bennett* v. *Marshall*. In that case Lawrence, J., and the Court of Appeal unanimously held that they were bound by the decision and reasoning of the House in *Foulsham* v. *Pickles* [1925] A.C. 458. That was disputed by the Crown, and was the real point of controversy in the present case. After a study of the judgments in *Bennett* v. *Marshall* (*supra*), so far as they dealt with the *ratio decidendi* in *Foulsham* v. *Pickles* (*supra*), there was no ground for rejecting or criticising them. There was no doubt that the present case was governed by *Foulsham* v. *Pickles*, and the appeal should be dismissed.

The other noble and learned lords agreed. Appeal dismissed.

APPEARANCES: *Sir Lionel Heald*, Q.C. (A.-G.) and *Sir Reginald Hills* (*Tucker*, Q.C., with them) (*Solicitor of Inland Revenue*); *F. H. Talbot*, Q.C., and *D. Miller* (*Simmons & Simmons*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[2 W.L.R. 927**

QUEEN'S BENCH DIVISION

RENT RESTRICTION: COVENANT NOT TO ASSIGN: SUB-LEASE WITH CONSENT OF LANDLORD: ASSIGNMENT OF SUB-LEASE WITH CONSENT TO COMPANY FOR OCCUPATION OF THIRD PARTY: ASSIGNMENT TO THIRD PARTY WITHOUT CONSENT

Drive Yourself Hire Co. (London), Ltd. *v.* Strutt and Another

Lynskey, J. 30th March, 1953

Action.

A lease for a term of twenty years contained a covenant not to assign, under-let or part with possession of the premises without the consent of the landlord. In April, 1932, the landlord granted a licence to the first defendant, the tenant under the lease, for the creation of a sub-lease to expire on 10th November, 1951, one day before the expiry of the head lease. The licence provided that the sub-lease should contain a similar covenant that the sub-lessee should not assign without the consent of the superior landlord, that the consent under the licence was restricted to that sub-lease and that the covenant against assignment in the head lease should remain in force. The superior landlord was not a party to the sub-lease and the power of re-entry and determination of the sub-lease for breach of covenant was reserved to the first defendant alone. In January, 1937, with the consent of the first defendant and the superior landlord, the sub-lessee assigned the remainder of the term of the sub-lease to a company, and the licence giving consent to the assignment provided for the use and occupation of the premises by the second defendant. In February, 1951, the first defendant permitted the company to assign the balance of the sub-lease to the second defendant, having previously informed the company that the consent of the superior landlord to the assignment would not be required. The second defendant continued in occupation of the premises after the expiry of the sub-lease and the head lease. The plaintiffs, successors in title of the original superior landlord, brought proceedings for possession against both defendants, alleging a breach of covenant by the first defendant in failing to deliver up the premises at the end of her lease and also alleging that the second defendant was in wrongful occupation of the premises. By her defence, the first defendant contended that she was unable to deliver up possession by reason of the operation of the Rent Acts because the second defendant was in personal occupation of the premises which had been lawfully assigned to him; and that on the expiration of his sub-lease he became the tenant of the plaintiffs. The second defendant also contended that he was in lawful occupation of the premises and was entitled to the protection of the Rent Acts. By their reply the plaintiffs contended that the assignment to the second defendant had been made without their consent and was unlawful. They further contended that if the Rent Acts applied they were entitled to possession under s. 3 (1) and paras. (*a*) and (*d*) of the First Schedule to the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933.

LYNSKEY, J., said that the second defendant was in lawful occupation of the premises as a sub-tenant, as the licence to assign the sub-lease to the company had been made with the consent of both the first defendant and the superior landlord "for the use and occupation of the second defendant." The question whether the second defendant was in such occupation lawfully as a sub-tenant depended primarily on whether the assignment to him was a valid assignment. The sub-tenant was not a party to the superior lease, and the superior landlord was not a party to the sub-lease and could not expressly require the sub-lessor to bind herself to enforce the covenant by the sub-lessee, nor could such a term be implied in the licence to create a sub-tenancy. It was therefore for the sub-lessor, the first defendant, to enforce the covenant in the sub-lease not to assign without the consent of the superior landlord, or not, as she thought fit. She had consented to the assignment to the second defendant without requiring the company to obtain the plaintiffs' consent, and in the result the sub-lease was lawfully assigned to the second defendant and he was lawfully in occupation as a sub-tenant. Having regard to s. 12 (1) (*f*) and (*g*) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, the second defendant, who remained in possession after the expiration of the sub-lease, became a tenant of the premises under s. 15 (3) of the Act. The plaintiffs were not entitled to possession under para. (*a*) of the First Schedule to the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933, as there was no breach of any obligation of which they were entitled to take advantage, since the tenancy in force at that time must have meant the sub-tenancy; and further, the plaintiffs were not entitled to possession under para. (*d*) since they were not the landlords at the time of the assignment, and their consent was not required. The action therefore failed against both defendants. Had the plaintiffs been entitled to possession under paras. (*a*) or (*d*) he would, in all the circumstances, have made an order for possession.

APPEARANCES: *L. J. Belcourt* (*Merton Naydler*); *D. J. Hyamson* (*Farrer & Co.*); and *M. Waters* (*Child & Child*).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] [2 W.L.R. 953

SUNDAY OBSERVANCE: COMIC PATTER WITH MUSICAL BACKGROUND: WHETHER "MUSICAL ENTERTAINMENT"

Barnes *v.* Jarvis

Lord Goddard, C.J., Lynskey and Parker, JJ.
16th April, 1953

Case stated by Blackpool justices.

Informations were preferred against the defendant, the licensee of a theatre, charging him with committing a breach of a term of the licence, which required that the theatre should not be used on Sundays "except for musical entertainments as defined by the Sunday Entertainments Act, 1932." According to the evidence, one of the items in an evening entertainment given at the theatre was a turn by *R*, a comedian, who gave imitations using spoken dialogue and mime, his sketches including such subjects as a scene between a married couple before the wife's mother was due to visit them; a similar scene concerning the husband's propensity for visiting the public house, and two drunken men in a public house. He was accompanied by a pianist with whom he rehearsed beforehand, and who arranged and played a musical background which was adapted and timed to *R's* act. At the end of his act *R* sang two songs accompanied by the orchestra. Section 3 of the Act of 1932 provides that a licensing authority shall have power "to grant . . . licenses in respect only of musical entertainments on Sundays"; by s. 5: "'Musical entertainment' means a concert or similar entertainment consisting of the performance of music, with or without singing or recitation." The justices dismissed the informations. The prosecutor appealed.

LORD GODDARD, C.J., said that on the facts as found *R's* entertainment was nothing but an ordinary music hall variety turn. To call it musical entertainment, merely because he had somebody on the stage playing the piano while he was giving such comic turns, was simply to call it something which it was not. Common sense must be applied in construing statutes. The object of the Act must be considered, and the object of the Act of 1932 was clearly to permit public entertainment to be given on Sundays of the nature of what anybody would call a concert. *R's* act could not be called that by any stretch of the imagination. The case must go back with a direction to convict.

LYNSKEY and PARKER, JJ., agreed. Appeal allowed.

APPEARANCES: *G. W. Guthrie Jones* (*Gibson & Weldon*, for *Worden & Naylor*, Blackpool); *J. Di V. Nahum*, Q.C. (*Denton, Hall & Burgin*, for *Blackhurst, Parker & Co.*, Blackpool).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 649

ROAD TRAFFIC: VEHICLES HIRED WITH DRIVER BY HOLDER OF "C" LICENCE FROM HOLDER OF "B" LICENCE: VEHICLES DRIVEN BEYOND LIMITS PRESCRIBED BY "B" LICENCES

Sykes *v.* Millington

Lord Goddard, C.J., Lynskey and Parker, JJ.
17th April, 1953

Case stated by Hampshire justices.

The defendant, a haulage contractor, was the holder of two "B" licences relating to three vehicles owned by him, limiting the use of the vehicles to certain areas. On certain dates in 1952 one or other of the vehicles were let on hire to a company for the carriage of the company's goods; the company held a "C" licence authorising the use of hired vehicles without limit of area. On every occasion the driver was provided by the defendant, who charged the company accordingly. One driver was employed by the defendant, who paid his wages; the other driver was the son of the defendant, who maintained him and gave him money; no money was paid to the drivers by the company. On a number of occasions the vehicles so hired were driven beyond the limits

prescribed by the "B" licences, and informations were prepared against the defendant charging him under s. 2 (3) of the Road and Rail Traffic Act, 1933, with using the vehicles otherwise than in accordance with the "B" licences. The justices dismissed the informations, holding that, whether or not the drivers were the servants of the defendant, they were at the material times the agents of the company within s. 1 (3) of the Act, which provides: "When a goods vehicle is being used on a road for the carriage of goods . . . the person whose agent or servant the driver is, shall, for the purposes of this Act, be deemed to be the person by whom the vehicle is being used." The prosecutor appealed.

LORD GODDARD, C.J., said that, applying the test laid down in *Mersey Docks and Harbour Board* v. *Coggins and Griffiths (Liverpool), Ltd.* [1947] A.C. 1, it was clear that the drivers were at all times the servants of the defendants. The Act seemed to be something in the nature of a trap, and it could be well understood why the justices tried to find a way of dismissing the summonses; but the words of s. 1 (3) were too strong. The only question was, whether the drivers were the agents or servants of the defendant; and a man could not be the servant of *A* and the agent of *B* in performing the same piece of work; the justices, accordingly, could not find that the drivers were the agents of the company, and there must be a direction to convict. At the same time, it would be well if it could be made clear that a "C" licence holder, who was authorised to hire a vehicle, must take care not to hire it with a driver.

LYNSKEY and PARKER, JJ., agreed. Appeal allowed.

APPEARANCES: *J. P. Ashworth* (*Treasury Solicitor*); *R. I. Threlfall* (*Arthur S. Joseph & Cates*, for *MacDonald, Jacobs and Oates*, Portsmouth).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [2 W.L.R. 973

COURT OF CRIMINAL APPEAL

LARCENY: "FRAUDULENTLY AND WITHOUT CLAIM OF RIGHT": MEANING

R. *v.* Williams

Lord Goddard, C.J., Byrne and Parker, JJ. 1st April, 1953

Appeals against conviction and sentence.

The appellants, who were husband and wife, were charged at Monmouthshire Quarter Sessions with the larceny of money and notes, the property of the Postmaster-General. The male appellant carried on a general shop and his wife was the sub-postmistress of a post office conducted on the premises and was entirely responsible for the accounts both of the post office and the shop. The business of the shop was in difficulties and the female appellant, with the knowledge of her husband, took money from the post office till and used it for the business of the shop. In her evidence, in which she was supported by her husband, she said that she thought she would be able to repay the money out of her salary as postmistress and from sales in the shop. The indictment on which the appellants were charged contained eight counts. The first five counts charged them with the larceny of specific sums and the sixth with the larceny of a sum of £544, which included the sums forming the subject of the earlier counts. The seventh count charged both the appellants with falsification of accounts and the eighth charged the female appellant only with a similar offence. The jury acquitted the appellants on count 2 and convicted them on all the others. They added a rider to their verdict that in regard to the charges made in counts 1 and 3 the appellants intended to repay the money and honestly believed that they would be able to do so, and that in respect of counts 4, 5 and 6 they intended to repay, but had no honest belief that they would be able to. The deputy chairman passed a sentence of 2½ years' imprisonment on the male appellant and of eighteen months on his wife in respect of the charge relating to £544, one month on count 1 and twelve months on the other counts in relation to larceny, all the sentences to run concurrently. On the counts relating to falsification of accounts he passed a sentence of twelve months in respect of count 7 on each appellant and on the eighth count a similar sentence in the case of the female appellant only. The main ground of the appeals against conviction was that the deputy chairman had misdirected the jury on the meaning of the word "fraudulently" in s. 1 of the Larceny Act, 1916. That section provides that "a person steals who, without the consent of the owner, fraudulently and without claim of right made in good faith, takes and carries away anything capable of being stolen with intent at the time of such taking permanently to deprive the owner thereof . . ."

LORD GODDARD, C.J., said that the case would have been much simpler if the appellants had been charged with fraudulent conversion instead of larceny because difficulties might arise in the case of the theft of coins and notes. Another thing he wished to say was that count 6, which concerned the aggregate of the amounts charged in the earlier counts, was clearly bad for duplicity and the conviction on it would be quashed, but that made no difference since the convictions on the other counts would stand. The charge against the appellants was stealing notes and cash from the post office till and putting the money into the shop till or into their pockets. The court had to consider whether that amounted to larceny, bearing in mind that the appellants could quite properly have accounted to the Postmaster-General by paying over different coins or notes of the same value. They had also to consider whether the rider of the jury that in regard to the amount charged in two counts the appellants intended to repay and had reasonable grounds for believing that they could do so afforded a defence, and also in regard to three other counts whether a similar intention without reasonable belief in the ability to repay afforded a defence. On the charge of falsification there was apparently no defence at all. Turning to the definition of larceny in s. 1 of the Larceny Act, 1916, doubts had arisen as to the meaning therein of "fraudulently" and whether it added anything to the words "without claim of right." The first thing to remember was that it was undoubtedly the law that an innocent taking and a subsequent appropriation with the knowledge that the property was not the taker's did not amount to larceny. There must first be an intention permanently to deprive the owner of the property in the goods, and also an absence of a claim of right. In the view of the court the word "fraudulently" did, and was intended to, add something to the words "without a claim of right," and it meant that the taking must be done intentionally, under no mistake, and with the knowledge that the thing taken was the property of another person. It was argued that if the appellants intended to repay the money and had reasonable grounds for thinking they would be able to do so, it would be an answer to the charge. In considering that point they must bear in mind the direction of Channell, J., to the jury in *R.* v. *Carpenter* (1911), 22 Cox C.C. 618, which was the *locus classicus* on the question of honest intention, and, applying the tests there laid down, they were of opinion that as the money in the present case was taken by the appellants who intended to use it for purposes different from those for which they were holding it and from those for which the persons who paid it intended it to be used, i.e., for paying for stamps or postal orders, and also for purposes different from those which their employer, the Postmaster-General, intended it to be used by them, by taking the actual coins and notes and using them for their own purposes, the appellants intended to deprive the Postmaster-General of the property in the notes and coins. In so doing they acted without a claim of right and fraudulently because they knew what they were doing and that they had no right to take the money which they knew was not theirs. The fact that they had a hope or expectation in the future of repaying the money might go to mitigation, but did not amount to a defence. With regard to the sentence, the man received a sentence of 2½ years' imprisonment and the woman one of eighteen months. Why, when a man and woman were involved, it seemed so often to be considered that the woman should always receive a less sentence than the man, he (Lord Goddard, C.J.) did not know. In the present case one would have supposed that it was the woman who was the more to blame. But as the sentences were passed on the count which they had quashed, the concurrent sentences on the other counts remained, so that each of the appellants would serve the same sentence of one year.

APPEARANCES: *J. H. Buzzard* (*Registrar, Court of Criminal Appeal*); *R. C. Hutton* and *A. L. Gordon* (*Director of Public Prosecutions*).

[Reported by PHILIP B. DURNFORD, Esq., Barrister-at-Law] [2 W.L.R. 937

CONSISTORY COURT OF SOUTHWARK

ECCLESIASTICAL LAW: WHETHER HIGH ALTAR OF STONE PERMISSIBLE

***In re* St. John the Divine, Richmond**

Chancellor Garth Moore 16th March, 1953

Petition for a faculty.

The vicar and churchwardens of a parish petitioned for a faculty to place a stone altar in the chancel of the church, in

substitution for one made of pitch-pine. There was in a side chapel a movable altar made of wood. The proposal was generally approved in the parish.

CHANCELLOR GARTH MOORE said that the vicar attached no doctrinal significance to the material of which the altar was made. Not only was that right, but also no such significance should be attached to the name used, whether "altar" or "table," which had long been used interchangeably, and there were historical reasons for vagueness in the matter. The question was merely one of construction of the relevant legislation. The 82nd canon required the provision of a movable table for the celebration of the Holy Communion; the rubric at the beginning of the Book of Common Prayer required that "chancels shall remain as they have done in times past." *Faulkner* v. *Litchfield* (1845), 1 Rob. Eccl. 184, and *Liddell* v. *Beal* (1857), Moore's Special Report 186, showed that the canon was not satisfied by a stone altar because it was immovable, not because stone was illegal. In the present case it was argued that the canon was satisfied, because there was already a movable altar in the chapel. That might satisfy the canon, but not the rubric; whose combined effect seemed to demand that, in accordance with the rubric, there should be an altar in the chancel and that, in accordance with the canon, it should be movable. That seemed to be the effect of *In re St. Hilary, Cornwall*; *Roffe-Sylvester* v. *King* [1939] P. 64, in the Court of Arches, in which it was held that five side altars of stone might remain, while the stone altar in the chancel must be removed, as the law required that that altar must be movable and made of wood. The proposed new canon 97 would permit an altar to be of stone, but it had not yet been enacted. The law must be applied as it actually existed. All that was decided in the present case was that the principal altar in a parish church must be movable, so that the court could not sanction the erection of an altar which would not be movable. Petition refused.

APPEARANCES: *W. S. Wigglesworth* (*J. P. Winckworth*).

[Reported by F. R. DYMOND, Esq., Barrister at-Law] [2 W.L.R. 921

SURVEY OF THE WEEK

HOUSE OF LORDS

PROGRESS OF BILLS

Read First Time:—

Dover Harbour Bill [H.C.] [21st April.
Metropolitan Water Board Bill [H.C.] [21st April.

Read Third Time:—

Gateshead Extension Bill [H.L.] [23rd April.

In Committee:—

Iron and Steel Bill [H.C.] [22nd April.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read First Time:—

Finance Bill [H.C.] [22nd April.
To grant certain duties, to alter other duties, and to amend the law relating to the National Debt and the Public Revenue, and to make further provision in connection with Finance.

Hospital of St. Mary Magdalen at Colchester Bill [H.C.] [21st April.
To confirm a Scheme of the Charity Commissioners for the application or management of the Charity known as the Hospital of St. Mary Magdalen, otherwise King James's Hospital, in Colchester, in the County of Essex.

Hospital of the Blessed Trinity at Guildford Bill [H.C.] [21st April.
To confirm a Scheme of the Charity Commissioners for the application or management of the Charity called The Hospital of the Blessed Trinity, in the Borough of Guildford, in the County of Surrey.

Rhodesia and Nyasaland Federation Bill [H.C.] [22nd April.
To provide for the federation of Southern Rhodesia, Northern Rhodesia and Nyasaland; and for purposes connected therewith.

Read Second Time:—

Bromley Corporation Bill [H.C.] [23rd April.
Slaughter of Animals (Pigs) Bill [H.C.] [24th April.
University of St. Andrews Bill [H.L.] [22nd April.

Read Third Time:—

National Trust Bill [H.L.] [20th April.
Pharmacy Bill [H.C.] [24th April.
Road Transport Lighting (Rear Lights) Bill [H.C.] [24th April.

B. QUESTIONS

INDICTABLE OFFENCES (PROSECUTIONS)

The HOME SECRETARY stated that in 1951 47 per cent. of all indictable offences known to the police in England and Wales were cleared up, but that the percentage varied widely according to the type of offence. [23rd April.

SPEED LIMIT, ROYAL PARKS (PROSECUTIONS)

The HOME SECRETARY stated that during 1952 proceedings for exceeding the speed limit in Hyde Park, St. James's and the Green Parks, and Regent's Park were taken against 1,383 persons, of whom 1,094 were driving private cars, 125 were driving cabs, 17 were driving goods vehicles and 147 were riding motor-cycles. [23rd April.

SALE OF TOBACCO TO JUVENILES

The HOME SECRETARY gave the following information as to prosecutions under the Children and Young Persons Act, 1933, for selling tobacco to young persons under sixteen years of age.

	Persons prosecuted	*Persons found guilty*
1945	26	26
1946	13	9
1947	16	15
1948	17	17
1949	8	8
1950	14	14
1951	25	24
1952	49	48
	168	161

NATIONAL HEALTH SERVICE (LEGAL ACTIONS)

Air Commodore HARVEY asked what steps the Minister of Health was taking to protect doctors from litigation resulting from their work in the health scheme. Miss HORNSBY-SMITH said that officers of her department were at present discussing with representatives of the profession the relations, financial and other, between hospital authorities and their medical staffs when legal actions were brought against either or both. [23rd April.

AIRCRAFT (DAMAGE TO THIRD PARTIES)

Mr. PROFUMO said that the Rome Convention on damage caused by foreign aircraft to third parties on the surface was signed by Her Majesty's Government on 22nd April, but its provisions would not come into force in this country until ratified. Legislation would be necessary before ratification could be effected. [23rd April.

STATUTORY INSTRUMENTS

Airdrie, Coatbridge and District Water Board Order, 1953. (S.I. 1953 No. 667 (S.60).)

Argyll County Council (Clachaig Water) Water Order, 1953. (S.I. 1953 No. 662 (S.55).) 5d.

Argyll County Council (Cullipool) Water Order, 1953. (S.I. 1953 No. 665 (S.58).) 5d.

Biscuits (Charges) (Revocation) Order, 1953. (S.I. 1953 No. 668.)

Button Manufacturing Wages Council (Great Britain) Wages Regulation (Amendment) Order, 1953. (S.I. 1953 No. 674.) 5d.

Control of Bristles (Revocation) Order, 1953. (S.I. 1953 No. 658.)

County of Inverness (Loch nan Smalag, South Uist) Water Order, 1953. (S.I. 1953 No. 663 (S.56).) 5d.

County of Surrey (Electoral Divisions) Order, 1953. (S.I. 1953 No. 677.)

Draft **Education Authority Bursaries** (Scotland) Regulations, 1953. 6d.

Exchange Control (Authorised Dealers) (Amendment) Order, 1953. (S.I. 1953 No. 653.)

Exchange Control (Authorised Depositaries) (Amendment) (No. 2) Order, 1953. (S.I. 1953 No. 654.)

Export of Goods (Control) (Consolidation) Order, 1953. (S.I. 1953 No. 671.) 1s. 8d.

Glasgow Water Order, 1953. (S.I. 1953 No. 666 (S.59).)

Kitchen Waste (Amendment) Order, 1953. (S.I. 1953 No. 637.)

Leicester Water (Extension) Order, 1953. (S.I. 1953 No. 675.)

London Traffic (Parking Places) Consolidation (Amendment) Regulations, 1953. (S.I. 1953 No. 655.)

London Traffic (Prescribed Routes) (Amendment) Regulations, 1953. (S.I. 1953 No. 656.)

London Traffic (Prescribed Routes) (No. 12) Regulations, 1953. (S.I. 1953 No. 657.)

National Insurance (Industrial Injuries) (Prescribed Diseases) Amendment Regulations, 1953. (S.I. 1953 No. 669.) 5d.

Police (Discipline) Regulations, 1953. (S.I. 1953 No. 636.)

Stirlingshire and Falkirk Water Order, 1953. (S.I. 1953 No. 664 (S.57).)

Stopping Up of Highways (Canterbury) (No. 1) Order, 1953. (S.I. 1953 No. 627.)

Stopping up of Highways (County of Southampton) (No. 2) Order, 1953. (S.I. 1953 No. 672.)

Stopping up of Highways (Hertfordshire) (No. 1) Order, 1953. (S.I. 1953 No. 633.)

Stopping up of Highways (Kingston-upon-Hull) (No. 2) Order, 1953. (S.I. 1953 No. 628.)

Stopping up of Highways (Kirkcudbrightshire) (No. 1) Order, 1953. (S.I. 1953 No. 632.)

Stopping up of Highways (Lancashire) (No. 3) Order, 1953. (S.I. 1953 No. 631.)

Stopping up of Highways (Lancashire) (No. 4) Order, 1953. (S.I. 1953 No. 630.)

Stopping up of Highways (London) (No. 4) Order, 1953. (S.I. 1953 No. 629.)

Stopping up of Highways (Nottinghamshire) (No. 1) Order, 1953. (S.I. 1953 No. 626.)

Sugar (Rationing) (Amendment) Order, 1953. (S.I. 1953 No. 639.)

Draft **Teachers Superannuation** (Welbeck College—Army) Scheme, 1953.

Draft **Town and Country Planning** (Minerals) (Scotland) Regulations, 1953. 5d.

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 102-103 Fetter Lane, E.C.4. The price in each case, unless otherwise stated, is 4d., post free.]

POINTS IN PRACTICE

Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 102-103 Fetter Lane, E.C.4, and contain the name and address of the subscriber, and a stamped, addressed envelope.

Transfer of Mortgage Affected by Rent and Mortgage Interest Restrictions Acts—WHETHER MORTGAGOR CAN BE COMPELLED TO JOIN IN

Q. We act for a beneficiary who is now entitled absolutely to all the objects of the trust. In particular, there is a sum on mortgage which it is proposed should be transferred to our client, as mortgagee. The mortgage was first entered into in 1908. In 1930 there was a transfer of mortgage, the mortgagor being the same party, but now that we propose joining in the mortgagor we are informed that this party has been dead for some years. We may add that we never had prior information of this. Incidentally, the interest was increased in pursuance of the Increase of Rent and Mortgage Interest (Restrictions) Act. In our endeavour now to ascertain who is the party interested in the equity, for that person to be joined in, we have come across obstacles. Objections are being taken that, as this is a protected mortgage, the mortgagee cannot compel any party interested in the equity to join in, and that if there is such a precedent, it does not take into account the provisions of the Increase of Rent and Mortgage Interest (Restrictions) Act. It is argued further that there is no authority whereby the mortgagee can insist, under these circumstances, in bringing the title deeds up to date.

A. We do not know of any means whereby in the circumstances of the present case the mortgagor can be compelled either to bring his own title up to date or to join in the proposed transfer of mortgage. The sanction by which either of these steps is procured in ordinary circumstances is that, if the mortgagor refuses, the mortgagee will call in the mortgage or take administration proceedings if the mortgagor is dead. If, as is assumed in the present case, no default has occurred in the payment of interest within twenty-one days of the due dates and there has been no breach of the covenants in the mortgage deed (other than the covenant for repayment of principal), nor any failure to keep the property in repair, the mortgagee is precluded by s. 7 of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, from enforcing his security or taking administration proceedings (*Park* v. *Whiteside* (1919), 53 Ir. L.T. 141 (Ch.)) and has thereby been deprived of his power to compel the mortgagor to bring his title up to date or to join in a transfer of the mortgage.

Controlled-Price Houses—SALE IN EXCESS OF PRICE LIMITED

Q. *A B* is the owner in fee simple of a house and garden. The house was erected under licence granted subject to a condition that it was not to be sold for more than £*x*. *A B* has received an offer for the house and garden considerably in advance of the limited price. Would it be legitimate for *A B* to contract to sell the house to *C D* at the limited price and to enter into a separate contract to sell the garden to *C D* for an amount equivalent to the difference between the limited price and the price offered? If not, would it be legitimate for *A B* to sell *C D* other land at a price in excess of its value by the difference between the limited price and the price offered for the house and garden, giving *C D* an option to purchase the house and garden at the limited price?

A. It would be unlawful for *A B* to contract to sell the house at the limited price and to enter into a separate contract to sell the garden for the difference. Such a transaction was held to be an offence in *Modern Housing* (*Leicester*), *Ltd.* v. *Gunning* [1948] 1 All E.R. 784. See Building Materials and Housing Act, 1945, ss. 7 (3) (5) and 9 (4). We think the granting of an option would be an offer to sell the house and, in the circumstances envisaged, this also would be an offence. If it could be shown later that the sale of the other land and the grant of the option were associated transactions then the effect of the 1945 Act, s. 7 (3) (5) or (6), would apparently be to render the consideration for the sale of the house excessive. Without knowing exactly how the arrangement would be carried out it is not possible to say which subsection might apply, but we consider that it is impossible to devise a scheme on the lines indicated which would not involve danger of criminal proceedings.

Rent Restriction—LEASE TO LIMITED COMPANY—PREVENTING CREATION OF CONTROLLED TENANCIES BY ASSIGNMENT OR SUB-LETTING

Q. *X* desires to grant a lease of an unfurnished house to *Y*, Ltd., for a fixed term of seven years. After this term has expired *X* requires possession. The letting would be controlled by the Rent Restrictions Acts if *Y* were not a limited company. It is believed that *Y*, Ltd., wish to assign or sub-let to their employees on service tenancies. Can you quote to us a precedent of a clause for inclusion in the lease which would prevent *Y*, Ltd., creating a controlled tenancy so that there would be nothing to prevent *X* having possession of the house at the end of the term?

A. We do not know of any such precedent and think it rather unlikely that any exists. We assume that *Y*, Ltd., would decline to accept a lease absolutely prohibiting alienation; and even if they accepted such, the authorities on the interpretation of the words "any sub-tenant to whom the premises or any part thereof have been lawfully sub-let" (Increase of Rent, etc., Restrictions Act, 1920, s. 15 (3)) are now such that *X* would have to take action immediately he became aware of the grant of a (service) sub-tenancy, failing which the sub-tenant would be entitled to protection on the termination of

Y, Ltd.'s, lease: *Norman* v. *Simpson* [1946] K.B. 158 (C.A.); *Watson* v. *Saunders-Roe, Ltd.* (1947), 63 T.L.R. 106 (C.A.) (the facts of which bear some resemblance to the situation apprehended). We think that *X's* interests might be protected if the lease, while restricting alienation by assignment or sub-letting of the whole or part of the premises, expressly authorised service *occupation* by the company's employees, the occupants to be licensees and not (sub) tenants. If this were done, *X* would be in a better position to refute an allegation that he knew of any sub-letting which, despite the covenant, might come into being. A mere licensee does not benefit by the subsection: *Cumberland Property Investment Trust, Ltd.* v. *Wood*, Estates Gazette Digest, 1946, p. 193.

Executor—PURCHASE OF TRUST SECURITIES QUOTED ON STOCK EXCHANGE AT MARKET VALUE

Q. Executors are in course of winding up an estate, part of which consists of securities quoted on The London Stock Exchange. One of the executors, who is also one of the residuary beneficiaries, would like to purchase the securities at their market price. This appears to me to be in direct conflict with an executor's duties, and I shall be glad to know whether, in any circumstances, it would be permissible for such executor to purchase the securities, even if the consents of the remaining residuary beneficiaries were obtained.

A. The rule against an executor or trustee purchasing the trust property is absolute but does not operate to prevent the purchase of a beneficiary's interest provided no advantage is taken by the executor of his position, the consideration is adequate and the beneficiary has the fullest information relating to his interest. Where these conditions obtain and the beneficiaries are together able to dispose of the whole of the trust premises the permissible purchase of the beneficiaries' interests may be equivalent to the purchase of the trust property itself. In the present case, there would appear to be an advantage for the beneficiaries if the executor purchases, since they will get "buyer's price" and be saved brokerage. On the other hand, there might be an appreciation in value immediately following the sale, in which case they might become dissatisfied with the price and attempt to set aside the sale, which will be voidable if the court considers the price inadequate. As the proposed price is intended to be market value much may depend on the date of sale and if this is selected by the executor a conflict of duty and possible grounds for complaint may arise. If, however, the beneficiaries select the date of sale, act under competent independent advice, and are all of one mind, of full age and otherwise *sui juris*, we think the executor may purchase with reasonable safety.

Pre-1926 Tenancy in Common—TRANSITIONAL PROVISIONS OF LAW OF PROPERTY ACT, 1925, SCHED. I, PT. IV, PARA. 1 (1)—SURVIVING TRUSTEE FOR SALE APPOINTED EXECUTRIX OF THE OTHER—TITLE OF SURVIVOR TO CONVEY

Q. Before 1926 the entirety of land, now to be conveyed to our client, was vested absolutely and beneficially in *A* and *B* as tenants in common free from incumbrances. After 1925 *B* died, and by her will appointed *A* as her executrix, but we are not aware of the contents of the will. Can *A* now convey the land to our client and give a valid receipt for the purchase-money? Would the position be different if *B* had not appointed *A* as her executrix?

A. In our opinion, a good title can only be made by *A* alone if it is shown that the whole legal and *beneficial* interest is vested in *A*. In her capacity as executrix of *B*, *A* does not hold *B's* interest beneficially but as trustee for the persons entitled under *B's* will subject to her powers as personal representative to dispose of *B's* equitable interest in the land in a due course of administration. Accordingly, unless the beneficial provisions of *B's* will are brought on to the title and show that *A* is also solely and beneficially entitled to *B's* interest and it is further shown that such interest is not required for the purpose of paying *B's* debts, *A* as surviving trustee for sale will hold the legal estate upon the statutory trusts under the Law of Property Act, 1925, Sched. I, Pt. IV, para. 1 (1) (*b*), and must therefore appoint a new trustee in order that a purchaser may obtain a good title.

NOTES AND NEWS

Honours and Appointments

The Lord Chancellor has appointed Mr. THOMAS ELDER-JONES to be a Judge of County Courts with effect from 22nd April, 1953, and has directed that he shall be one of the judges of Circuit 34 (Brentford and Uxbridge) and additional judge at Willesden and Windsor County Courts.

The Lord Chancellor has appointed Mr. ROWE HARDING to be a Judge of County Courts with effect from 27th April, 1953, in the place of the late Judge Samuel, Q.C., as the judge of Circuit 28 (Mid-Wales and Shropshire).

The Queen has been pleased to appoint Mr. FREDERICK ELWYN JONES, Q.C., to be Recorder of the Borough of Swansea.

Mr. KENNETH LETHAM AMEY, solicitor, of Leeds, has been appointed Assistant Solicitor to Stockport Borough Council in place of Mr. N. B. MITCHELL, LL.B., who has recently resigned to take up a similar appointment with West Ham Borough Council.

Mr. HERBERT LLOYD, Secretary of the South Wales Legal Aid Area, has been co-opted a member of the Joint Board of Legal Education of Cardiff and Swansea University Colleges.

The Board of Trade have appointed Mr. JAMES TYE to be Assistant Official Receiver for the Bankruptcy District of the County Courts of Sheffield, Barnsley and Chesterfield.

Mr. RALPH MARCO WILSON, solicitor, of Sheffield, has been appointed Law Clerk to the Cutlers' Company. He succeeds his father, the late Mr. R. T. Wilson, who died on 15th February last.

The Queen has been pleased to approve the appointment of Mr. H. B. BENSON and Mr. W. B. VAN LARE, District Magistrates, Gold Coast, to be Puisne Judges in that territory, in succession to Mr. Justice Jackson and Mr. Justice Morgan who retired in December, 1952.

The following appointments are announced in the Colonial Legal Service: Mr. W. G. BRYCE, Crown Counsel, Fiji, to be Solicitor-General, Fiji; Mr. L. B. DUFF to be Resident Magistrate, Tanganyika; Mr. J. GILMARTIN to be Assistant Legal Secretary, East Africa High Commission; Mr. T. A. MAHONY to be Crown Counsel, Singapore.

Personal Notes

Mr. H. A. Badham, solicitor, of Tewkesbury, is to retire as clerk to Tewkesbury Borough Magistrates' Court. He succeeded to the clerkship when his father retired in 1914.

Mr. R. H. Lewis-Manning, solicitor, of Bournemouth, was married on 16th April to Miss M. Lloyd.

Mr. B. Savory, solicitor, of Fakenham, was married recently to Miss F. H. Anderson, of Bungay, Suffolk.

Miscellaneous

DEATH CERTIFICATES UNDER CIVIL AVIATION ACT, 1949

The Senior Registrar of the Principal Probate Registry has directed that certificates of death and of presumed death issued by the Registrar-General from the Register kept under s. 55 of the Civil Aviation Act, 1949, may be accepted as sufficient evidence of death on application for a grant of representation.

THE SOLICITORS ACTS, 1932 TO 1941

On the 16th April, 1953, an order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that the name of JOHN HUTTON, formerly of No. 117 Shepherds Bush Road, London, W.6, be struck off the Roll of Solicitors of the Supreme Court, and that he do pay to the applicant his costs of and incidental to the application and enquiry.

At the Final Examination of THE LAW SOCIETY held on 9th, 10th and 11th March, 1953, of the 347 candidates who gave notice for the examination, 162 passed. The Council have awarded the following prizes: the Sheffield Prize (value £38) to L. Oldman, LL.B. London, and the John Mackrell Prize (value £15) to J. G. Fleming, B.A. Cantab.

DEVELOPMENT PLANS

Cardiff City Council Development Plan

The above development plan was on 15th April, 1953, submitted to the Minister of Housing and Local Government for approval. The plan relates to land situate within the County Borough of Cardiff. A certified copy of the plan as submitted for approval has been deposited for public inspection at the City Surveyor's Department, Top Floor, 67 Queen Street, Cardiff. The copy of the plan so deposited is available for inspection free of charge by all persons interested at the place mentioned above between the hours of 9.30 a.m. and 4.30 p.m. from Monday to Friday each week and between the hours of 9.30 a.m. and 12.30 p.m. on a Saturday. Any objection or representation with reference to the plan may be sent in writing to the Under-Secretary, Ministry of Housing and Local Government, Cathays Park, Cardiff, before 12th June, 1953, and any such objection or representation should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the Cardiff City Council and will then be entitled to receive notice of the eventual approval of the plan.

County of Devon Development Plan

The above development plan was, on 31st March, 1953, submitted to the Minister of Housing and Local Government for approval. The plan relates to all land situate within the County of Devon except the Cities of Exeter and Plymouth. Certified copies of the plan, as submitted for approval, have been deposited at :—

(1) The Castle, Exeter. (Room 12.)

(2) The Northern Divisional Planning Office, Victoria Chambers, High Street, Barnstaple.

(3) The Southern Divisional Planning Office, Castle Circus House (Third Floor), Torquay.

(4) The Eastern Divisional Planning Office, 4 Barnfield Crescent, Exeter.

(5) The South-Western Divisional Planning Office, Plymton St. Mary Rural District Council Offices, Plymton.

(6) The Offices of the several Borough, Urban, and Rural District Councils within the County. (The Offices of the Broadwoodwidger R.D.C. are at 20 Western Road, Launceston, Cornwall) ;

and will be available for public inspection free of charge by all persons interested for a period of eight weeks from 25th April to 20th June, 1953, at the places of deposit between the hours of 10 a.m. to 12.30 p.m. and 2.30 p.m. to 4.30 p.m. on Mondays to Fridays (inclusive) and 10 a.m. to 12 noon on Saturdays. Town Maps and Town Programme Maps for (*a*) Newton Abbot, Kingsteignton and Kingskerswell ; (*b*) Exmouth and Lympstone ; (*c*) Plymton and Plymstock, and (*d*) Topsham, Pinhoe, Alphington and Ide ; a Comprehensive Development Area Map for the war damaged area of Exmouth ; and Designation Maps for (*a*) Budleigh Salterton, (*b*) Exmouth, (*c*) Newton Abbot Urban District and (*d*) Plymton St. Mary Rural District have also been deposited in the districts concerned as part of the plan. Any objection or representation with reference to the plan may be sent in writing to The Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 24th June, 1953, and any such objection or representation should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the Clerk of the Devon County Council, The Castle, Exeter, and will then be entitled to receive notice of the eventual approval of the plan.

Note.—Enquiries, in person, relating to the plan may be made at any of the places of deposit : written enquiries (in duplicate where possible) should be addressed to the Clerk of the Devon County Council.

City of Nottingham Development Plan (Part I)

The above development plan was on 17th April, 1953, submitted to the Minister of Housing and Local Government for approval. The plan relates to land situate within the City of Nottingham as it was immediately prior to 1st April, 1952. It does not relate to the land which on 1st April, 1952, was added to and now forms part of the said City by virtue of the provisions contained in the Nottingham City and County Boundaries Act, 1951. A certified copy of the plan as submitted for approval has been deposited for public inspection at the office of the Town Clerk, the Guildhall, Burton Street, Nottingham, and is available for inspection free of charge by all persons interested between 9 a.m. and 1 p.m. and 2.30 p.m. and 5.30 p.m. on Mondays to Fridays and 9 a.m. to 12 noon on Saturdays. Any objection or representation with reference to the plan may be sent in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 9th June, 1953, and any such objection or representation should state the grounds upon which it is made. Persons making an objection or representation may register their names and addresses with the Town Clerk and will then be entitled to receive notice of the eventual approval of the plan.

It is stated in the *London Gazette* that the notice substantially reproduced above supersedes that noted at p. 34, *ante*. The Ministry of Housing and Local Government will regard any objection or representation lodged with him in accordance with that earlier notice, and not already withdrawn, as an objection or representation lodged in accordance with the present notice.

OBITUARY

Mr. J. W. HARRISON

Mr. John William Harrison, for over sixty years a cashier with Robert Barber & Sons, of Nottingham, died on 16th April, aged 78.

Sir FREDERICK HINDLE

Sir Frederick Hindle, solicitor, of Darwen, died on 23rd April, aged 75. He was Clerk to the Darwen justices and Mayor of Darwen in 1912–13, and later became an alderman of the Lancashire County Council. He was Member of Parliament for the Darwen Division from 1923 to 1924. He was Deputy Regional Commissioner for Civil Defence in the North-Western Region from 1941 to 1945, and since the inception of the National Health Service he had been chairman of the Blackburn and East Lancashire Group Hospitals Management Committee. He was admitted in 1899.

Mr. H. J. MARTIN

Mr. Herbert James Martin, retired solicitor, of Temple, E.C.4, died on 26th April, aged 91.

Mr. J. E. T. POLLARD

Mr. John Empson Toplis Pollard, retired solicitor, of Norwich, died on 16th April, aged 89. He was Clerk to Blofield Justices, 1903–1939, Clerk to Forehoe Justices, 1903–1919, Registrar of Wymondham County Court, 1903–1941, Clerk to Blofield Guardians and later Clerk to Blofield and Flegg R.D.C., 1915–1939. He was also Clerk of South Walsham Drainage Board from 1886 to 1936. For over thirty years he was Capital Coroner of the Liberties and Franchises of the Dean and Chapter of Norwich. He was admitted in 1887.

SOCIETIES

A meeting of the Royal Society of Arts will be held at John Adam Street, Adelphi, London, W.C.2, on Wednesday, 6th May, 1953, at 2.30 p.m., when a paper, illustrated by lantern slides, on the Great Seal of England (1066–1953) will be read by Sir Hilary Jenkinson, C.B.E., LL.D., F.S.A., Deputy Keeper of the Records. The Right Hon. Sir Raymond Evershed, LL.D., F.S.A., Master of the Rolls, will preside. Applications for tickets of admission should be addressed to the Secretary of the Society.

The Union Society of London announces that the following debates will be held in the Common Room, Gray's Inn, at 8 p.m. Wednesday, 6th May : "That there is little merit in being a spectator" ; Wednesday, 13th May : "That the United States should keep its finger out of the European pie" ; Wednesday, 20th May : "That the government of business is not the business of the Government." The next meeting will be held on 10th June.

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